भारत की राजपत्र The Gazette of India

प्राधिकार से प्रकाशित हास्य १८२४६० हुए AUTRORITY

साप्ताहिक WEEKLY

ਜਂ, 31) No.31} वह दिल्ली, जुलाई 29—अगस्त 4, 2007, शनिवार/ज्ञावण 7—आवण 13, 1929

NEW DELHI, JULY 29—AUGUST 4, 2007, SATURDAY/SRAVANA 7—SRAVANA 13, 1929

इस भाग में भिन्न पुष्ट संख्या दी जाती है जिससे कि यह पृष्टक संकलन के रूप में रखा जा सके Separate Paging is given to this Part in order that it may be filed as a separate compilation

> भाग [[खण्ड 3 वंप-वंपड (II) PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को स्मेडकर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं Statutory Orders and Notifications issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय

(विजीव सेव्हर्ष विश्वग)

नई दिल्ली, 27 जुलई, 2007

का.आ, 2127 .—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीण उपर्धंध) स्टीम, 1970/1980 के खण्ड 3 के तम खण्ड (1) और खण्ड 8 के उप खण्ड (1) के साथ पित बैंककारी कंपनी (उपक्रमों का अर्थन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधार 3 के खण्ड (क) हारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदहारा, भारतीय दिवर्ष बैंक के परापर्श से, वर्तपान में इलाहानार बैंक के कार्यपालक निदेशक श्री एस. को गोयल (जन्म तिथि 22 9-1953) को । अगस्त, 2007 को या उससे बाद उनके परधार ग्रहण करने की तारीख से और 30-9-2010 तक, अर्थान् महीने के अंतिम दिन, जिस दिन से अधिवर्षिता की आधु पूरी करेंगे अथवा

अगला आदेश होने ठक, जो भी पहले हो, युको बैंक के अध्यक्ष एवं प्रदेश विदेशक के रूप में नियुक्त करती हैं ।

> [फा. सं. 9/24/2006-बीओ-1] जी. जी. सिंह, उप सक्ति

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 27th July, 2007

8.0. 2127.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, in consultation with

(4815)

3288 GH**200**7

the Reserve Bank of India, hereby appoints Shri S K. Goel (DoB 22 9-1950) presently Executive Director. Allahabad Bank as Chairman & Managing Director. ECO Bank for a period from the date of his taking charge of the post on or after 1st August. 2007 and tipto 30-9-2010 i.e. the last day of the month in which he would attain the age of superannution or until further orders, whichever is earlier

(F.No. 9/24/2006-BO-1) G.B. SINGH, Dy. Serv

स्थास्थ्य और परिवार अस्याण पंजास्त्य

(स्वास्ट्य विधान)

नई दिल्ली, 13 जुलाई, 2007

का.आ. 2128. — भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 1:953 की 102) की धास [] की उप धास (2) द्वारा प्रदक्त करिया है। के प्रयोग करते हुए केन्द्र सरकार भारतीय अवसुर्विज्ञान परिषद से परिपर्श करते के बाद एतद्वाम उका आधिनियम की प्रथम अनुसूची में निम्मीर्टाशिन और संशोधन करती हैं, अर्थात :

उक्त अनुसूची में--

(के) "दिल्ली विश्वविद्यालय" के सामने 'मान्यता प्राप्त आधुर्विज्ञान अर्हना' [इसके याद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अंग्निम प्रविध्ति और 'पंजीकरण के लिए मंस्कृण' (इसके बाद श्रीभ (1) के रूप में संदर्भित] शीर्ष के अर्न्ह्मगत उससे मंबद्ध प्रविध्ति के भीर, निम्निनिद्धित रखा आएगा, अर्थात् :

मारणी

(3)	(3)
विष्टर ऑफ मेडिसिन,	एम. डॉ. (अं. बी. जॉ.)
∕ अस्€त एवं की रांग विज्ञान) । ः	(सह एक मान्यता प्राप्त आयुर्विज्ञान अहँता होनी यदि यह सफदर हंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्व विद्यालय द्वारा प्रदान की गई हो।
प्रसृष्टि इतं स्थी रोग विज्ञान में दिख्लां क ं : : i	ही. जी. ओ. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्टता होगी सदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्व- विद्यालय द्वारा प्रदान की गई हो।

(स. यू. 12012/14/2007-**एव ई** (फी-1)) पार्टी

एस. कं. मिश्रा, अंकर सचिव

MUNISTRY OF HEALTH AND FAMILY WELFARE. (Department of Health)

New Dethi, the 12th July, 2007

S.O. 2128.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act. 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:—

In the said Schedule---

(a) against "Delhi University", under the heading "Recognized Medical Qualification" [hereinafter referred to as column (2)], after the last entry and entry relating therein under the heading "Abbreviation for Registration" [hereinafter referred to as enturn (3)], the following shall be inserted, namely:

TABLE

(2)	G)
"Doctor of Medicine	MD(O.B.G.)
(Obst. & Gynae.)"	(This shall be a recognized medical qualification when gramful by Delhi Emversity to respect of students trained at Safdarjung Hospital, New Delhi
"Diploma in Obsi 👸	D.G.O.
Gynae."	(This shall be a recognized medical qualification when granted by Delhi University introspect of students trained at Safdarjung Hospital, New Delhi.
	(No. U. (2012/14/2007-ME/P-ITFpc)

फेल परिवहन, सङ्क परिवहन और राजमार्ग मंत्रालय

S. K. MISHRA, Under Secv.

(पटेत परिकारन विकास)

(ग्रहामकः 📙 अनुमाग)

नई दिल्ली, ३। जून, 2007

का.आ, 2129. - फाइल सं एच-11020/2/2005 स्थापना और 1-35019/3/2(X)6- अगर.टी.आई. के अंतर्गत जारी किए गए दिनांक 30 स्लिम्बर, 2005. श्लांक । सितम्बर, 2006 के का.आ सं 1443(अ.) में अर्बेश्क आशोधन करके तथा सामान्य खण्ड अधिनियम, 1897 (1897 का 10) की धारा 22 के साथ प्रस्ति सूचना के अधिकार, अधिनियम, 2005 (2005 का 22) की धारा 19 की संपर्धरा (1) के अनुसरण थे, भीत परिषदन, सहक-परिवटन और राज्यार्ग मंत्रालय का पांत परिषद्भ विभाग (मूख्यालय), एसदुद्वारा, निम्नोलिखित अधिकारियो कः नामोद्दिष्टः करता है :--

- 🤃 श्री पी. सो. धीयन के स्थान पर त्री राजीव सुप्ता, संयुक्त सांचय (पीठ परिवहन) (बूरपाय सं-23710189) (कपर) सं 406) परिवटन भवन, नई दिल्ली- 110001 को ऑस्ट्रेरीय जुल परिवहत और पोत निर्माण तथा पोत मरम्मत सहित पोत परिवहन स्क्रींथ से संबंधित सभी मा**भलों के** संबंध में अभील अधिकारी के रूप कें ।
- (ii) ओ अजब कुमार पल्ला के स्वाद पर ओ सकेश श्रीवास्तव, संयुक्त सर्विव (पत्तन/प्रशासन) (दूरभाव सं.-23711873) (कमरा मं. 431) परिवहन मधन, नई दिल्ली-110001 को पोत परिवहन विभाग के मुख्यालय के अधिकारियों और कर्मचारियों के प्रशासनिक फहलुओं से भंगियत सभी पापरलें और महापत्तन न्वासो, अंडमान लक्ष्द्वीय कंदरमह-निर्माण कार्य और महापत्तन प्रशुलक प्रशिकरण से संबंधित सभी मापली के संबंध में अपील अभिकारी के रूप ± ι

[फा, सं. 1-35014/\$/20**06**-सूचना का **अधिकार**] स्भाष चन्द्र, अवर सचिव

MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS

(Department of Shipping)

(E. tablishment-II Section)

New Delhi, the 21st June, 2007

- S.O. 2179.—In Partial modification of S.O. 1443(E) dated 300: September, 2005, 1st September, 2006 issued updat 11, No. 11-11020/2/2005-Eatt, and I 35019/3/2006-RTI respicatively and in pursuance of Sub-Section (1) of Section 19 of the Right to Information Act. 2005 (22 of 20(6) read with Section 22 of the General Clauses Act. 1897 (30 of 1897), the Department of Shipping (Headquarters). Ministry of Shipping, Road Transport & Highways hereby designates : -
 - (i) Shri Rajeev Gupta, Joint Secretary (Shipping) (Tel No. 237101891 (Room No. 406), Transport Bhavan, New Delhi-110001 as Appellate Authority (AA) for all matters concerning Shipping Wing including Inland Water Transport. (TWT) and Ship Ruilding and Ship Repair in place of Shei P. C. Dhiman.
 - (ii) Shri Rakesh Srivasiava, Joint Secretary (Admo. & Ports) (Tel No. 23711873) (Room No. 411).

Transport Bhavan, New Delhi-110001 as Appellate Authority (AA) for all matters concerning Administrative aspects of the Officers and Staff of the Headquarters of the Department of Shipping and all matters concerning Major Ports and Andaman Lakshadweep Harbour Works (ALHW), Tariff Authority for Major Ports (TAMP) in place of Shri A. K. Bitalla.

[F. No. I-35019/3/2006-RT]

SUBHASH CHAND, Under Socy.

वस्य पंत्रालय

न**ई दिस्सी**, 30 जुलाई, 2007

का,आ, 2130 .-कंदीय रेगम केंद्र अधिनियम, 1948 (1948 का 6)) को धारा 4 की उप-धारा (3) प्रदत्त शक्तियों का प्रयोग कक्षे हुए, केंद्र सरकार, एतदहारा उका अधिनियम के प्राथवानों के अध्यधीन इस अधिसूचना की तिथि से तौन वर्षों की अवधि के लिए कंडीय रेशम बोर्ड के सदस्य के रूप में कार्य करने के लिए निम्नश्लि**खर** व्यक्ति का नामांकन अधिसृष्टित करती है ।

ं उपर्युक्त अर्ध्धनियम की भारा श्री किंतारेक्डी जीनिवास्त रेष्डी. 4(३)(जं) के अंतर्गत केंद्र गांव बादकरपटली, सरकार द्वारी मिन्द्रशासमुद्धा मञ्जल, जिला नलगोंडा (आध्र प्रदेश)

[फा.स. 25012/56/99-रेक्स]

भूपन्द्र सिंह, संयुक्त सन्दिन

नामित

MINISTRY OF TEXTELES

New Dothi, the 30th July, 2007

S.O. 2130.—In exercise of the powers conferred by sub-section (3) of Section 4 of the Central Silk Board Act. 1948, the Central Covernment hereby sotifies the nomination of the following person to serve as member of the Central Silk Bourd for a period of three years from the date of this polification subject to the provisions of the said Act.

Shei Ch. Srimiyasa Reddy. Yedgartally village ... Miryalguda Mandal, Nalgonda District (AP)

Nominated by the Central Government under Section 4(3)(j) of the Act.

[F. No. 25012/56/99-Silk]

BHUPENDRA SINGH, A Secy.

वयमोक्त मामले, खाच और सार्वजनिक वितरण मंत्रालय

(उपयोक्ता पायले विद्याग)

पारतीय मानक ब्यूरो

नई दिल्ली, 23 जुलाई, 2007

का,आ, 2131, -भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के नियम (5) के उप-नियम (6) के अनुसरण में भारतीय मानक व्यूगे एतदृहारा अधिमृचित करता है कि निम्न विवरण वाले लाइसेन्सों को उनके आगे दर्शायी गई तारीख से रद कर दिया गया है ;--

क्रम स <u>.</u>	लाइसेंस नं.	लाइस्रेन्सधारी का नाम व पता	लाइसेन्स को अंतर्गत वस्तु/प्रक्रम से संबंधित भारतीय नातक कः शीपंक व संबंधित भारता	रह करने की तिथि
	ब् न, 2007		·	·
Ů1.	8019493	मैसर्स यो. आर. रोतिंग मिल्स (प्रा.) लि. प्लॉट नं. एस. 707, रोड मं. 6, वि. औ. क्षेत्र, जयपुर-302 013 (राजस्थान)	=	21 -06-2007
12.	87937]]	पैसर्स श्री अग्रसेन इण्डस्ट्रीज, ई-293 (ए), रोड नं. 14 वि. औ. क्षेत्र, जयपुर-302 013 (राजस्थान)	398 (भाग 2) :1996 ए भी एस अप्	08-06-2007

[सं. सीएमडी/13:13]

ए. के तलवार, अप पहानिदेशक (मुहर)

MENISTRY OF CONSUMER AFFAIRS, FOODAND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

BUREAU OF INDIAN STANDARDS

New Delhi, the 23rd July, 2007.

S. O. 2131—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulation; 1988, the Bureau of Indian Standards, hereby notifies that the license (x) particulars of which is/are given below has/have been Cancelled with effect from the date indicated:

SCHEDULE

Sl. No.	Littence No (CM/L)	Name and Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled	Date of Cancellation
	June, 2007	_		_
OI.	87)9493	M/s. P. R. Rolling Mills (Pvt.) Limited Plot No. S-707, Road No6, Vishwakarma Industrial Area Jaipur-302 013 (Rajanthan)	IS 8500: 1991 Structural Steel	21-06-2007
02.	879 3711	M/s. Shree Agarsen Industries E-293 (A), Road No. 14 Vishwakarma Industrial Area, Jaipur-302 013 (Rajasthan)	IS 398 (Part 2) : 1996 ACSR	8-6-2007

[No. CMD/13:13].

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 23 जुलाई, 2007

का.का. 2:32.—भारतीय मानक ब्यूरी (प्रमाणन) विनियम, 1988 के नियम 4 के उप-नियम 5 के अनुसरण में भारतीय मानक ब्यूरी एतपहारा अधिसुचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

क्रम सं	लाइसँस संख्याः		लाइसेन्सधारी का नाम व पता	महरतीय मानक का सोर्घक	मा मा संख्या	 माग	अनुभाग	वर्ष
1	2	3	4	5	6	7	8	·9
J.	T745 89 3	29-05-2007	कोठारी इंडस्ट्रीज (मृतिरः 2), प्लॉट नं. 123, 124 और 125, चंद्रमौली को-आपरेटिव इस्टेट लिपिटेड, पोहोल जिला-सोलागुर-413212	सोक्षेत्र के लिए उत्स भरता के पॉलिंक्लीन पाइप्स	14333			1996
2	7747190	01 -06- 2007	धनलक्ष्मी री-ग्रेलिंग मिल्स, डी-57, स्टीशनल, एसआईटीसी, जालना-431203	कांकीट री-इन्फोसंमेंट के लिए उच्च शॉका की डीफार्यट स्टील की तारें न ऋड़ें	1786			1985
3.	77470 89	01-06-2007	सुकनराज एस. घरमार, 624, गणेश पेठ, गोविंद हलवाई चौक, पुषे-411002,	स्वर्ण और रक्षणं सिन्नदातु आपूरण्यक्तिम-शिल्पकृति और चिन्हांकन	l4ŧ7			1 999
4.	77 3 73 8 9	06 06-2007	किशोर अकृता फूड्स, शैठ नं. 81/एकी, लोनावाला इंडस्ट्रीयल इस्टेट, नांगरगांव, लोनावाला, चालुका-मावल, जिला- गुणे-410401	पैके जर्य ः पंयजल (पैकेज ब्दः प्राकृतिक मिनरल जल के अलावा)	14543			2004
5.	77483 94	06-06-2007	चुनीलाल लथाजी एंड संस. 546, सॅटर स्ट्रीट, कौशल पैलेख केंप, पुणे-411 00 1	स्वर्ण और स्वर्ण धित्रधातु आपूरण/कृत्रिम-शिल्पकृति और चिन्हांकर	1417			1999
f.	7748903	01-06-2007	नावाली इंडस्ट्रीज, नट संख्या ५५, सम्बनसाही, कोरोची, पालुका-हाटकंगल जिलम-कोल्हापुर-416005	पेयजल आपूर्ति के लिए अनप्सास्टिसङ्ख्य पीसीसी पाइप्स	4985			2000
7.	77 49501	07-06-2007	षायोनीर पॉलीमर्स, 139, षंद्रमौसी को आपरेटिय इंडस्ट्रीयल इस्टेट, मोहोल-बिन्ता-सेलापुर-413213	पैयजल आपूर्ति कं लिए उच्च घनत्व के पौरितिक्रलीन पाइप्स	4984			1 995
&	775 379!	19-06-2007	रामचंद्र त्रिंचक देशमुख, 447, चौपाटी कारंबा, अरुमदनगर-4]400!,	स्वर्ण और स्वर्ण भिन्नधानु आपूषण/कृषिम-शिल्मकृति और चिन्हांकन	1417		गैपमको / १ र	19 99

[सं. मीप्मकी/13 : !!]

ए. के. तलबार, उप महानिदेशक (मुहर)

New Delhi, the 23rd July, 2007

S. Q. 3132 .—In pursuance of Sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certification) Regulations. (1986, o) the Bureau of Indian Standards, hereby notibes the grant of licences particulars of which are given in the pollowing schedule;

SI.	Licence	Gram Date	Name & Address of the	Title of the Standard	iS No.	Part	Section	Year
No.	No. 1 2	3		5	6	7	8	 9
<u>-</u> :	7745803	29-5-2007	Kothari Industries (Cnit-II) Piot No. 123, 124 & 125, Chandramauli Co-ep ladi, Estate Lid., Monel, District Salapur-41,3212	High density Polychylene pipes for sewerage	14333			1996
2	. 7747 (9 0)	1-6-2007	Dhenlayını Re Rolling Mil's.	High strength	1.86			1945
			D-57, Add/MIDC.	deformed steel burs				
			Jahrs 431203	and wires for				
				concrete				
				pc(p) operance)				
	2047089	1.6.2007	Sukanny S. Parmor.	Gold and gold alloys.	141			1999
			624, Ganesh Peth.	Jewellery/artefacts.				
			Govind Habwai Chowk.	Tineness and marking				
			Proc. 41 i002					
_	. 7737389	67-209	Kishor Aqua Foods.	Peckaged drinking wat	er	14543		2001
			Shed No. 81/AB.	(Other than packaged)				
			Longo la Industral Esarate.	isatural moneral water)				
			Nangargaon, Lonavida.					
			Tateloi-Moval.					
			District-Pane-431401					
	7748394	6-6-31877	Chunilal Ladhail & Sons.	Gold and gold alloys.	1447			198
			546. Centre Street	gowerbory Amteriacity-				
			Kushai Pabice.	Fineness and marking				
			Camp, Pung 4 F4kH					
.:	7.74 80 B	1.67,500	li deji halustries.	Captasticazed PAC Pip	Č5	P865		131
			Gat No. 90,	for Potable Water Supp	phas			
			Chawanwadi, Korochs,					
			Taluko-Hajkanangolo.					
			District-Kolhapur 416005					
-	7 7749501	746 3007	Proteer Polymers.	High density polyethy		4984		199
			139, Chandramaeh Co-Op	pipes for potable waser	Γ			
			Indi fistate, Mohol.	supplies				
			District-Solupur-40/21/					_
	175,7791	[44-64 200 G	Ramchandra Trimbak	Gold and gold alloys	1417			19-8
			Deshmukh, 447, Chowpan	grweifiery/arthau) v				
			Kerenja, Ahmednagar-41-00	l. Hineswass and marking.				

[No. CMBM: 5: 11].

नई दिल्ली, 23 जुलाई, 2007

का.आ. 2133.-- मारतिय मानक ब्यूरी (प्रमाणन) विनियम, 1988 के नियम (4) के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूने एउद्दर्शः अधिसूचित करता है कि बिन लाइसेन्सों के विवरण नीचे अनुसूची में दिए यए हैं, वे स्वीकृत कर दिये गए हैं :

अयुसूची

<u>த</u> ு.	ल इसेंस	चसनू तिथि	लाइसेंसचारी का नाम व पता	पहरतीय मानक का शीर्षक व
ΗĹ	स	64		संबंधित भारतीय मानक
i	□ □	3	4	5
	জুন 2007	- · - , - 		· · ·
!.	XXXXXXXX	05-06-2007	मैसमें श्री राम केवल्स ग्रा. लि.,	69 4 : 1990
			ए 524. रीको औद्योगिक क्षेत्र,	पीबीसी इन्सुलेटेड केबल्स
			चौपांको, पिवाडी-301 019.	
			फ़िला-अलवर (स्वस्थान)	
٠.	8831487	32-05-2007	संसनं भी प्रयाम कृषा इलैक्ट्क प्रधालित,	7098 (भाग ।) : 1988
			स्च १४३७, फेंज ६.	एक्सएलपीई इन्सुलंटेड पौबीसी
			सीतापुरा काँखांगिक क्षेत्र, जयपुर	केवल्स
			(राजस्थान)	
ξ,	9831: 9 92	32-06-2907	मैसमें भिवादी थिनिण्डर्स हो। (ल.,	3196 (भाग 2) : 1992
			ई-925, 1200 एवं (20), औ. क्षेत्र,	सितिण्डर्श फॉर स्थिक्षंपायकरः
			भिवादी-१०४ (८) ५,	गैमेज अदर देन
			जिस्तः आस्त्यः । सदस्यानः)	एसपीजी
4	k831689	t1-06-2007	मेमर्च अदिनाध एवंग कन्ट्राल कक्स पा. लि.,	7098 (भग १) : 1988
			एफ-671 . रोको आँद्यांगिक क्षेत्र,	. एक्सन्एभपीहं इन्सुसंटेड पीवीसी कंबल्स
			सीतापुरः, उत्रपुर (गजस्थान)	
ŧ	8831790	11-06-2007	गैसर्स आदिनाथ पॉवर फण्ट्रील कंगल्स प्रा. लि.,	1554 (भाग ।) : 1988
			एफ-67) रोको औद्योगिक क्षेत्र,	पी वीमी इन्स्केटेड (एचडी)
			सीतापुरा, वयपुर (राजस्थान)	कंबल्स
6	8832792	13 06 2007	मैसर्स नीमकण्ड वैरूड प्रा. सि.,	447 : 1988
			बी-947, रोको औद्योगिक क्षेत्र,	रबद्ध होज फॉर बैल्डिंग
			मोज ३, मिवाडी,	
			बिला-अलवर (राजस्थान)	
	8827597	29-05-2007	पैयर्स ओम इन्टरनेशनल,	14543 : 0 00 4
			एफ-31, रीको औद्योगिक क्षेत्र.	बातलबन्द पाँचे का पानी
			गंगल, अजमेर-305 00। (राजस्थान)	
Υ.	8827496	29-05- 200 7	मैसर्स एडवान्स माइक्रा फर्टीलाईक्स प्रा. कि.,	8960 : 1978
			ई-39, रीको औद्योगिक क्षेत्र,	मिवाइंल पैरायियान होपो
			बगरू (विस्तार), बगरू,	
			जिला-जबुपर (राजस्थान)	
9.	8828906	04-06-2007	मैसर्ल ही वर्धमान पॉवर प्रा. लि.,	7098 (माम ।) : 1988
			भी 649, रोड नं. ja.	एकसएलपोई इन्सुलटेड पोबीसी
			विश्वकर्ष औद्योगिक धुन,	ऋग्ला
			जयपुर-302 013 (राजस्थान)	
iù.	8831588	12-06-2007	मैसर्म मारुति जोलीमर्स,	4984 : 1995
	· · · · · · ·	LE CO MOOT	एफ-४ पूर्व ५, औद्योगिक क्षेत्र,	एचडोपीर्व पाइप्स
			मधानिया, जाधपुर- 342 005	A south that and an
			(सबस्थान)	

ء		3 ==	4	<u>-</u>
883	901KZ	177-06-2007	मैसर्स राजस्थान ट्रांसफोर्मर्स एण्ड स्वन्तनियर. (आरटीएस पॉवर कार्यो. लि. की इकाई), सी-174, रोड नं 9(जे) विश्वकर्मा भौद्योगिक क्षेत्र, जयपुर 302 013 (राजस्थान)	1554 (भाग) : : 988 पीर्वःसी इन्सुलेटेड (एचडी) कंडएल
2. 383	60 38 4	0 7-06-30 0 7	मैससे राजस्थान ट्रांसफोर्यमं एवड स्विचिपियर. (आरटीएम पॉक्स कार्ये. क्ति. की इकाई), मी-174, रोड नं. ५(ची), विश्वकर्या औद्योगिक क्षेत्र, जस्पुर-302 013 (राजस्थान)	7098 (भाग I) : 1988 १९६० इत्यादि इन्युलेटेड पोवीसी कंतल्य
13. 881	32388	11 06: 2 907	मैसर्से खोवाल सबमांसबल बेलंद पम्प्स, 22, शमां कॉलंची विम्तार. 22 गोदाम, जयपुर (राजस्थान)	8084 : 2002 सन्पर्धिकल अध्यक्ति
)±. 8 8:	29 6 05	05-06-2007	र्षसर्ग राजस्थान इंजीनियसं एयड कॉन्ट्रेक्टसं एण्टरपाईनेज, एफ-45, और्तामिक १७, सोबार (राजस्थान)	४५%1 : 1995 एचडीपीई पडफ
85. - 88 .	29504	05-06-2007	मैससं राज सक्ष्मा पोलीपसं, १९५०-१०७, रण्डोर औचोणिक क्षेत्र, जोधपुर ३४२-४०४ (ग्रजस्थान)	14151 (भाग 2) : 1999 क्यूसॅगीई फड्म
.к 88	35188	14-06-2 00 7	मैसमे ब्लंड (डॉग्स्या), एक ५४९, संद नं. १५ विस्वकर्मा आंद्योगिक क्षेत्र, जयगुर-502 (स.) (गजस्थल)	2984 : 1995 एनडीपोई पाइम्स
:" >>	330x7	14-06-2007	मैससं प्रेम इण्डब्ट्रीज. ई-354, रोड ना 54 जा. विश्वकर्मा औरतेमिकं श्रेत्र, जयपुर-307 013 (राजस्थान)	%)3: . 2002 सबसीर्मबल पन्न सेंट
}s: <8	GA \$ 9	18 06 2007	्षेत्रसं जो, सी, कवल्य एव 1 374, सीतापुर। आँहोणिक क्षेत्र, जसपुर (राजम्थान)	694 : (998) योगोसी इन्सुलंडेंड क्रीबल्म
(6. 88	34190	18-06 - 2007	मैसर्ग विजय कंबल्स एच- ३२३, सीतापुर। आद्योगिक क्षेत्र, जयपुर (राजस्थान)	69≐ः 1990 पोव'सी इन्धुलंडेड कंबलस
20 88	334 5 94	19-06-2007	मैससे सुनील ज्वैलर्स. 10, गंगा माता की गली. गंगाल की का गम्ता. जयपुर 302 (80) (गजस्थान)	1417 : 1999 स्वर्गाभुषणे की हालणाँकैय
29. 8 1	83 46 95	19-06-2007	संसर्व आराम कार्तास्टब्स प्रा. लि , जी-132, टींक सेट , सीतापुरा अञ्चोरिक क्षेत्र, जयपुर-302 (अजस्थान)	13487 : 1992 इर्गणंबान इक्किमपेंट एपीटर
22, 88	835701	21-06-2007	मैससं नांगतवाला इध्यंबस (प्रा.) लि एफ-152 एम.आई.ए अलन्य- 301 030 (गजस्थान)	9958 (भाग 21 : 2 00 3 इसास्टोमर इन्सुलेटेड कं ब ल्स

1	2	3	4	5
23.	6835902	21-06-2007	मैसर्स पाईन लैमोनेट्स प्रा. सि., ए-526 ए, तेको औद्योगिक क्षेत्र, चौपांकी, भिषाडी, जिला अलवर (राजस्थान)	4990 : 1993 कांक्रीट शटरिंग प्लाईलुड
24	8836093	21-06-2007	मैसर्स नवरतन पाईप एष्ड प्रोफाईल लि. एसपी–6, रीको औद्योगिक क्षेत्र, खुराखेडा, जिला अलवर (राजस्थान)	a270 : 2001 स्टील ट्यूय्स फॉर स्ट्रक् य रल परपज
25.	R83078R	08-06-2007	पैसर्स बैंकटेश इरोगेशन सिस्टमस प्रा. लि., जी–1-28, एचएमटी रोको औद्योगिक क्षेत्र, ब्यावर रोड, अवमेर- 305 (ब)1 (राजस्थान)	13487 : 1992 इरीगेशन इक्सिपमंट- एसीटर
2 6.	6826902	29-05-2007	मैसर्स केशव इसैक्ट्रिकस्स (प्रा.) लि., जी 1-63, रीको औद्योगिक क्षेत्र, कालाढेरा, जयपुर (राजस्थान)	14255 : 1995 एरियल कन्य ः कंग ल्य
27.	6626801	30 05 2007	मैसर्स जे. के. काइट सीमेंट क्कर्स पो. ऑ. मोटन-342 902 जिला नागौर (राजस्थान)	8112 : 1989 43 ग्रेड ओपीसी
28.	8827193	29-05-2 00 7	मैसमं सारूण्डा लैम्प धा लि., बोकानेर सेड, बीकासर, नोखा जिला-बोकानेर (सवस्थल)	418 : 2004 जीएलएस लैप्प्स
29.	88270 9 2	30-05-2007	पैसर्स जे. के. सीमेंट क्वर्स, पी. ऑ. गॉटन-342 902 जिला नागौर (राजस्थान)	1489 (भाग ।) : 1991 पोर्टलैण्ड पोबोलाना सीमेण्ट

[सं. सीएमडी/43 : 11]

ए, को तलबार, उप महानिदेशक (पुष्टर)

New Delhi, the 23rd July, 2007

S. O. 2133.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulation, 1988, the Bureau of Indian Standards, hereby notifies the grant of ficence particulars of which are given in the following Schedules:—

SCHEDLLE

Sl. No.	Licence No. (CM/L-)	Operative Date	Name and address of the Licensee	Article/Process covered by the licences and the relevant IS: Designation
1	2	3	-4	5
	June 2007	<u> </u>		
ÐΙ	\$2300A1	05-06-2007	M/s. Sri Ram Cables Pvt. Ltd. A-524, RHCO Industrial Area Chopanki, Bhiwadi Distt. Alwar-301019 Rajasthan	694:1990 PVC Insulated Cables

	2	3	4	5
2	8831487	12-6-2007	M/s. Saree Shyam Kripa Electric Pvr. Ltd. 11-1140, Phase-III Satapura Industrial Area, Jaipur Rajasihan	7088(Part 1):1988 XUPF Insulated PVC Cables
3	x 8 31992	12-6-2007	M/s. Bh.wad: Cylinders Pv: Ltd. E-925, 1200 & 1203 Industrial Area Bhiwadi-301019 Distr. Alwar Rajasthur.	3196(Part 2): 1992 Cylinders for Liquefiable Gases other than LPG
ŀ	8\$31689	11-6-2007	M/s. Adinath Power Control Cables (P) Ltd., F-671, RRCO Industrial Area Strapura, Jaipur (Rajasthan)	7098 (Part I): 1988 XI.PE Insulated PVC Cables
Š	8\$3(790)	11-6-2007	M/k. Adinath Power Control Cables (P) Ltd., 1-671, RECO Industrial Area Sitapura, Jaipur (Rajasthan)	i 354 (Pari I): 1988 PVV Insulated (HD) Cables
6	8&32791	13-6-2007	M/s. Neelkanth Wold Pvt. Ltd. G-947, RHCO Industrial Area Phase-III, Bhiwad: Disn. Alwar, Rajasthan	447:1988 Rubber Hose for welding
	8 6 .7597	29-5-2007	M/s. Om International F 31, RUCO Industrial Area Gegal, Ajmer—305 001 Rajasthan	.4543 EWA Packaged Drinking Water
ĸ	8827496	29-5-2007	M/s. Advance Micro Fernilizers Pvt. Ind., F-39, RIICO Industrial Area Bagnu [Extension], Bagnu Distr. Jaipud, Rajastban	896/k1978 Methyl Paradsion 2's DP
ý	N878906	÷-6-2007	M/s. Shree Vaudhman Power Pot Lid., G. 849, Road No. 1,4 V.K.3, Area, Jaipur-3@2013 Rajasthan	7998(Pen Di 1988 XÜPH Insulated PVC Cables
IC	7471798	12-6-2007	M/s. Maruti Polymers F-8&9. Industrial Area Mathania. Jodhpur-342005 Rajasthan	4084:1995 HIDPE Pipes
•	6 8 :0182	7-6-2007	M/s. Rajzsthan Transformers & Switchgear (A unit of RTS Power Corporation Ltd.), C-174, Road No. 9(3) V.K.I. Area, Jaipur-302013 Rajasthan	1554(Parat): 1988 PVC hisalared (HD) Cables

- ₋		3	4	5
2	8830384	7-6-2007	M/s, Rajasthan Transformers & Switchgear (A Unit of RTS Power Corporation Ltd., C-174, Road No. 9(1) V.K.1. Area, Jaipan-302013 Rajasthan.	7098 (Part1):1988 XLPE Insulated PVC Cables
13.	8837388	11-6-2007	M/s. Khowal Submersible Valour Pumps, 22, Sharma Colony Ext., 22, Godam, Jaiper, (Rajasthan).	8034:2002 Submersible Pumpsets
!4.	R829X05	5-6-2007	M/s. Rajasthan Engineers & Contractors Enterprises, F-45, Industrial Area Sikar (Rajasthan).	4984:1905 IIDPE Pipes
15.	#829504	5-6-2007	M/s. Raj Laxmi Polymers F-107, Mandor Industrial Arca, Joshpur-342304 (Rajasthan).	14151 (Part 2):1999 QCPE Pipes
96.	585318 8	14-6-2017	M/s. Blade (India) F-943, Road No. 14, V.K.I. Area, Jaipur-902013, Rajasthan.	4984:1995 11DPE Pipes
17	8833 0 87	14-6-2007	M/s. Prem Industries E-354, Road No. 14-J. V.K.I. Area, Jaipur-302013. Rajasthan.	8034:20(f2 Submersible Pumpsets
.8.	8834069	18-6-2007	M/s. G.C. Cables HI-374, Sijapura Industrial Acca. Jaipur, Rajasthao.	694-1990 PVC Insulated Cables
:g	3834(9)	18-6-2007	M/s. Vijay Cables H-373, Sitapura Industrial Area. Jaipur, Rajasthan.	694:1990 PVC Insolated Cables
3 0	8 8 34 9 54	19-6-2007	M/s. Sunil Jewellers 10, Canga Mata Ki Cali, Gopal ji ka Rasta, Jaipur-302003 Rajasthan.	1417:1999 Hallmarking of Gold Jewellery
21.	8834 <i>6</i> 95	19-6-2007	M/s. Aaram Plastics Private Limited G-232, Took Road, Sitapura, Industrial Area. Juipur-302022 Rajusthan.	13 484 : 1992 Irrigation Equipment Fanitiers
22	8835701	21-6-2007	M/s. Nangalwala linpex (P) Ltd., F-152, M.I.A. Alwar-301090 Rajasthan.	9968 (Part 2):2002 Flastomer Insulated Cable

1	2	3	4	5
23.	8335802	21-6-2007	M/s Pine Laminates Pvt. Ltd	4990:1993
			A-526 A, RIJCO Industrial Area.	Concrete Shuttering
			Chopanki, Bhiwadi,	Plywood
			Distr. Alwar, Rajasthan.	
24.	5336093	21-6-2007	M/s. Navratan Pipe & Profile	4270:3001
			Limited SP-6, RIHCO Industrial Area.	Steel Tubes for Structural
			Khushkhera Alwar, Rajasthan.	Purposes
25	9890768	8-6-2007	M/s. Vanktesh Irrigation Systems	13487.1992
			Pvt. Ltd., G-1-28, HMT RIICO Indi.	Irrigation Equipment
			Area Beawar Road, Ajmer-305001	Exhitters
			Rajasthan.	
26.	8826902	29 5 2007	M/s. Kehsav Electricals (P) Ltd.,	14255:1995
			GI-63, RIICO Industrial Area.	Aerial Bunched Cables
			Kaladera, Jaipur, Rajasthan.	
27.	8826801	30-5- 200 7	M/s, J.K. White Cement Works	8i 12:1 989
			P.O. Gotan-342902	43 Grade OPC
			Distt. Nagaur, Rajasthan.	
28	8827193	29-5-2007	M/s. Sarunda Lamps Private Limited,	408,2004
			Bikaner Road, Bikasar,	GLS1amps
		•	Nokha Distt. Bikanea, Rajasthan	·
260	8827092	30-5-2007	M/s. J K. Cement Works	1489 (Part I):1991
			P.O. Golan,	Portland Pozzolana Cement
			Disit, Nagaur 342902	
			Rajasthan.	

[No,CMD/13,11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 24 जुलाई, 2007

बज.आ. 2134 :-भारतीय मानक **ब्यू**री नियम, 1987 के नियम 7 के उपनियम (+) के खंड (ख) के अनुसरण में भारतीय मारक ब्यूरी एतद्**डा**ट अधिसूचित करता है कि नीचे अनुसूची में दिए **गए पा**२क (को) में संशोधन किया गया/किये गये हैं:-

अनुमूची

क्रम संस्था	मंशोधित भारतीय मानक(कों) को संख्या वर्षे और श्रीर्धक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
	2	3	4
	आईएस 10918:1984 की संशोधन संख्या ।	। जुलाई, 2007	31 जुलाई, 2007

हभ भारतीय संशोधन को प्रतियाँ भारतीय मानक च्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, 9ई दिल्ली 110m12, क्षेत्रीय कार्यालयाँ उहें दिल्ली, अंशिकाता, घण्डीगढ़, चेन्नई, मुख्यई तथा शाखा कार्यालयों अहसदाबाद, बंगलीर, भोषाल, भूवनेश्वर, कार्यम्बतूर, गुकाहारी, हैदरग्बद, चयपुर, कानपुर, पटना, पूर्ण तथा तिसवनन्दापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : इंटी !!/यो-!5]

भी. के. मुखर्जी, वैक्तनिक एक एवं प्रमुख (विद्युत तकनीकी)।

New Delbi, the 24th July, 2007.

S. O. 2134.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued:

SCHEDULE

St. No.	No. and Year of the Indian Standards	No. and Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
l. · ·	IS 10918: 1984, Specification versied type nickel cadmium batteries		31st July, 2007

Copy of this Amendment is available with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zular Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkuta, Chandigarh, Chemsai, Mumbai and also Branch Offices: Ahmedahad, Bangalore, Bhopal, Bhubaneshwar, Colimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna Pune, Thiruvananthapuram.

[Ref.: ET 11/1-35]

P. K. MUKHERJEF, Sc. F & Head (Electrotechnical)

नई दिल्ली, 27 जुलाई, 2007

का.आ. 2135.—मारहीव मानक च्यूरो (प्रमाणन) विनिवम, 1988 के विनियम 4 के उप-विनियम (5) के अनुसरण में भारतीय मानक च्यूरो एतरद्वारा अधिसूचित करता है कि जिनके विवरण तीचे अनुसूची में दिये गये हैं को लहसँस प्रदल किए गए हैं :-

अनुसूर्धाः

			T -		
——— क्रम सं	लाइसेंम संख्या	बैद्यता तिथि	पार्टी का नाम एवं पता (कारखाना)	उत्पाद	आह् एस सं./भाग/खण्ड तर्ष
	2	3	4	5	6
i	274919 4	5-6-2MR	जे एन इंडस्ट्रीन, 167डी अनवर इंडस्ट्रियल वेशफेअर असोसिएशन, मुकादम कंपाउंड के पास, फिल्म सिटी रोड, गोकुलधाम, मालाड (पूर्व), मुंबई-400097]554 : भाग । : 1988
2	7750280	4-6-2008	विकास कंबस्स, शर्वे सं. 112/2ए, एस्सर पेट्रोल पंप के पीछे, कल्याण मुखाड रोड, कांबगाँव, कल्याण, जिला धाने-421301	पोबोसी रोषित (हैवीडयूटी) विद्युत कंबल भाग] 1100 बोल्ट तक कार्यकारी बोल्टता के लिए	1554 : माग-1: 1988
3	7753993	21-6-200R	टेक्नोफ्लेक्स कोबल्स, इं/I, शिंगटे कंपाउंड, कोकत्तीपाडा, दहिसर (पूर्व), मुक्ड ४०००६८	पीवीसी रोधित (हैनोड्सूरी) कियुत केनल भाग 1 1100 चोल्ट तक कार्यकारी योल्टता के लिए	[554 : मान 1 : 19 88

l ž	3	4	5	é
4 7750078	10-6-2008	लोटस जागसं और कंबल्स. 41/3, सिल्बर इंडस्ट्रियल इस्टंट के पीछे, पातिलया गेड, भिमणंर, प्लॉट सं. 1, नानी दमण, दमण और दीव 396 210	ए स्त्री स्थैनिक द्वेशकामंद चालित बाट भट्टे एवं ए आर- घंट मोटर, घंग 0.2 एस तथा 0.5 एस	14697 : 1999
5 77542R8	25- 6- 2008	कल्की इंडस्ट्रिज, कल्की इस्टेट, इंश्वरमाई पटेल रोड, गंडरेगींब (पश्चिम), मृंबई १९९८-६३	सिलिंग सेन्डि	271: 1 999
6 7756090	27-6-2008	एस अन्य इडस्ट्रीज संख्या 54, दुसरु माला. आदित्य इंडस्ट्रियल इस्टेट, चिचीली बंदर रोड, मालाड (पश्चिम). सूंबई 4(X) 064	250 खंलट तक की रेटित बोस्टना वाले और 16 एम्प्येयर तक को रेटित करंट वाले प्लग और साजेट निकास	1293: 1988
7 7749497	6-6-2008	नविन इंडस्टीज, बैरक सं. 1965 के पीछे, औ. टी सेक्शन, उल्हासनगर, धार्न 421 005	पानीक्षी संधित (हैवीडयूटी) विश्वत कंबल भाग । 1100 पोल्ट तक कार्यकारी वोल्टल के लिए	3554 : भागे । : :988
8 7755 99 7	27 б∙2 гн ж	एपल इन्सुलेटेड बाबर प्राइवेट लिमिटेड, सर्वे सं: 219/2/3, दादरा चेक भौस्ट के पास, दादरा नगर हवेली, दादरा 396 230	निमन्बन माउसे क बाइडिंग तार भाग ४ अलग-अलग तारों की विशिष्टि अनुभाग ३ पालियस्टर और पालिप्रालोलीन संधित बाइडिंग्र नार	'8783 : भाग-4 : अनुभाग-3 : 1995
9 7750 38 1	4-6-2008	विकास केवल्स. सर्वे सं. 112/2, एस्पार पैट्टोल पंप के पीछे, कल्याण मुखाड रोड. कांबगाँव, कल्याण, बिला थाने-421 301	अनुप्रस्थ जुडं हुए पॉलीइथालीन निद्युतरांधी पी वी सी आवरित कोवल (भाग 1) 1100 वोल्स और सहित की कार्यकारी बोल्टता को लिए	
10 7749295	5 6-2008	राहुल होम अप्लाएसेस. फगवाला कपाऊंड. महाराष्ट्र नगर. मांडुए (पश्चिम). मुंबई 400 078	बिजली के घरंलू खाद्य गिक्सन (इवीपरक और ग्राइंडर) -	4250 ± 1980

[्]रेस्. केन्द्रीय प्रमाणन विभाग/13 ५ (६)

ए. के. उलन्तर, ३४ **महानिदेशक** (प्रमाणन)

New Defhi, the 27 th July, 2007

S. O. 2135.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule:

SCHEDULE

Sk. No.	Licence No.	Validity Date	Name and Address (factory) of the Party	Product	1S No /Pant/Sec Year
I		3	4	<u> </u>	<u>6</u>
I	7749194	05-6-2008	J.N. Industries 16/D, Anwar INDL. Welfare Association, NR. Mukadam Comp., Film City Read, Gukukham, Malad (E), Mambai-400097	PV(:) insulated (heavy duty) electric cables: Part I for working voltages upto and including 1100V	1554 : Part I : 1988
7.	7750280	()4-6-2008	Vikas Cables Survey No. 112/2, Behind Essar Petrol Pump. Kalyan Murbad Road, Kambagaon, Kalyan Dist. Thane 421301	PVC insulated (heavy duty) electric cables: Part I for working voltages upto and including \$100V	[554 : Part] : 1988
3	7753 99 3	21-6-2008	Technoflax Cables F/1, Shinghte Compound. Koknipada Dahisar (F). Mumbai-400068	PVC insulated (beavy duty) electric cables: Part I for working voltages upto and including 1100 V	1554 : Part I : 1988
4	7750078	10-6-2008	Louis Wires & Cables 41/3, Behind Silver Indl, Estate, Patalia Road, Bhimpore, Plot No. 1, Nani Daman Daman & Diu-396210	AC Static Transformer Operated Watthour and Var-hour Meters, Class 0.2 S and 0.5 S	14 69 7 : 1 999
5	7754288	25 6 2008	Kalki Industries Kalki Estate, Ishwarbhai Patel Rd, Goregaon (W), Mumbai-40063	Ceiling Roses	371:1999
6	7756090	27- 6-2008	S.R. Industries No. 54. Second Floot. Aditya Ind! Estate. Chinchol Bunder Road Malad (W), Mumbai-400064	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	1293 : 1988
7	7 74949 7	06-6-2008	Navio Industries Behind Bk. No. 1965. O. T. Section, (Thasnagar Thane-421005	PVC insulated (heavy duty) electric cables; Part I for working voltages upto and including 1100 V	. 1554 : Part 1 ; : 1968

	<u> 2</u> . ,_	3		5	á	
8 7755997 27-6-2008		7755997 27-6-2008 Apple Insulated W Survey No. 2 NR Dadra Che Dadra and Nag Dadar-396		Winding Wires for Submersible Mojors- Specification-Part 4: Specification for Individual Wires- Section 3: Polyester and polypropylene Insulated Winding Wires	8783 : Part 4 : Sec 3 : 1995	
đ	7750381	46-2008	Vikas Cabies Survey No. 1 i 2/2, behand Essar Petrol Pump. Kalyan-Murbad Road, Kambagaun Kalyan Thane-121001	Crosslinked Polyethylene Insulated PVC sheafted cables: Part Hor working voltage upto and including HOOV	70981. Part 1: 1988	
ր	1749295	5 6 2006	Rahul Home Appliances Fuggawala Compound, Maharashtra Nagar, Bhandup (W), Mumbai 400078	Domestic Electric Food-Mixers (Liquidizes auxi Grinders)	4250 . 1980	

[No. CMIM13:11]

A. K. TALWAR, Dy. Director General (Marks)

नई दिस्ली, 10 जुलाई, 2007

का आ, 2136.=भारतीय मानक व्यूरो (प्रमाणन) विनियम, 1988 के विनियम 6 के उग-विनियम (१) के अनुमरण में भारतीय मानक व्यूरो एतर्इारा मोर्च अनुसूची में दिये गये उत्पादों की मुहरांकन शुल्क अधिसृधित करता है:--

अनुसूची

-स्टॉब ज्या	387	अनु,	বৰ	ञ्ज्याद्	इकाई	-धुननम् जुलक	मुख्यंकर	ड=सई स्व	स्लेखाः इक्टडेया		प्लीब 2 में	डकार्ड दर	प्रजनन तिथि
				•		सई पैप्पं	्येट वैचाने 	संख्या १		म्लंग 2	ऽ≉लयां	शंष	
432	 !ı	0	198a	सरकों और लेपिया के तेल को स्वलियाँ	। ਣਾ	ጥ 37500	यर 30500	16/00	2000	8.06	2008	4 00	19 (8) 2003
4;	0	С	1946	काशिक मलाई रहित सूथ पाइटर] एप 원.	39200	15400	130 00	300	65.00	300	33,90	10 06 2001
.66	C	0	2002	प्रेटीलाकोर पायसनीय साह	100 लिस	43400	36900	22.00	2000	0	3	11.00	19 06 2005
IS I	U	0	2003	नहर के अध्यक्ष के लिए पराजदा उच्च प्रकार जैलीहबाइक्टेंस (एवडीपीई) की कपड़ा	100 वर्ग घीटर	55600	47300	3.00	संघी	-	-		19 (16 2000

[स. कंप्रवित्त3:19]

ए, कं. तत्तवार, उप महानिदेशक (मृहर)

New Delhi, the 30th July, 2007.

S. O. 2136.—In pursuance of sub-regulation (3) of regulation 6 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the marking fee for the products given in the Schedule:

SCHOULE

15 No	Par	t Sec	Year	Product	Units		Marking Fee Small	Units Rate		Units Rate			Effective
10						Large Scale	Scale	Slab 1	in Slab-1		io Slab-2	maiminų	DAC
1937	g	0	1986	Mustard & Rape Seed Oil Calic	lToeme	37500	30500	16.00	2000	8.00	2000	4.00	19-06-2007
4542	0	ń	1998	Parity Skiastico Milik Powder	IM.T.	39200	33 400	130.00	300	65.00	300	33.00	19-06-2007
5160	a	CI .	ZUÜZ.	,	100 Lines	43400	36900	22.00	2000	0		M1.00	19-06-2007
1535.	0	0	2003	Luminated High Density Polyethylene (HDPE) Pubric for Canal Liming	100 Sq. mts.	55600	47300	5 00	All	_	_	_	19-06-2007

[No.CMID/13:10]

A. K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 30 जुलाई, 2007

का.आ. 2137.—पारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विभिन्नम (5) के उप-विनियम (6) के अनुसरण में भारतीय भानक ब्यूरो एतद्द्वारा अधिसृचित करता है कि निम्न विवरण वाले तहरसेंसों को उनके आगे दर्शायी गई तारीख से रट्द/स्थणित कर दिया गया है :-

क्रम सन्दर्भः	लाइसेंस सं स्वा सीएम/एल—	लाईसँसम्ब री का नाम व	स्वाइसेंस के <i>जीव</i> नंत वस्तु/प्रक्रम सम्बद्ध करहेंय काल का लोक	रह/स्थगित करने की तिथि
	<u>.</u>	पत्।	<u> </u>	
Ē	2	3	4	5
L.	मीएम/एल-7471276	जय स्क्रोडियम इंडस्ट्रीज़, हरिजोम स्वेसायटी, कोटारिया रिंग रोह, राजकोट, गुजरात 360004	पैकेंज धन्द पेय जल (पैकेंज बन्द प्राकृतिक मिनरल जल के अलावा)- विशिष्टि प्राम्म (4543: 2004	2007/05/01
2	सीय्म/प्ल-7591286	ए वन सीमेंट इंडस्ट्रीब, 8-अ राष्ट्रीय राजपार्ग, अमूल दाल मिल के सापने, विमयदी, मोरबी, जिल्हा राजकोट, गुजरात 363642	43 वेड सम्वारण पोर्टलॅंड सीमेंट पामा 8112 : 1989	2007/06/22
3.	सीएम/एल -076786 8	एक्सेल कॉम सेबर लि. 6/2 रूवापरी सेंड, भावनगर, मुजरात	तकनीकी ग्रेड एन्डोसल्कान की विशिष्टि भागा 4344 : 1978	2007/06/13
۵.	ਜ਼ੀएफ/एल –2224436	मोलर पैकेंबिंग प्रा. लि., श्री अमरसिंहची मिल्च कांखकंड, स्टेशन रोड्, बांकानेर, जिला : राजकोट, गुणरात 363622	टाइपराइटर के सूनी रिक्न की विकिप्टि भामा ४।७४ : १९७७	2007/05/03
5.	सीर्प/एल-7245166	अमर ज्योत पोली केम प्रा. लि., प्लॉट सं. 2222, लोधिका जी आई ही सी, राधे वे बिज, मेटीहा, तालुका : लोधिका, जिला राजकोट, पुजरात 364458	पेय जल आपृति, मल और और्टोगिक व्हिस्तावों हेतृ ढच्च चनत्व पॉलोइचहतीन पाइप भामा ४९६४ : 1995	2007/05/30

I	. 2	3	4	5
6.	सीरमण्स-7315#68	समाति पोसीमस्य, 1/4, समाट इंडस्ट्रीयस इरिया, बैन सैब के समीप, को विकास सम्पन्ध मार्ग, गोंडल रोड़, राजकोट मुक्तन 360004	सिंचई उपस्कर -स्थिकलर पाईप- विशिष्टि धाग । पोलीश्रीसीन पाईप भाषा (415) : भाग : 1999	2007/05/30
7.	सीएम/एल-7318268	असोक होन र्प्कायसिक प्र. लि., असोक उद्योग भवन-११, सांठी रोड्, माजदी प्लोट, राजकोट, मुजरात 360004	इ वित पैट्रो लियम गैसों के साथ प्रयुक्त मरेलू गैस फूके प्रमुष 4246 : 2002	2007/06/20
8.	मीएभ/एस-7374278 :	कृष्णा प्तास्टिकण, पॉडल रोड्, मनसमा इंडस्ट्रीय, अपनाय मार्थलय, राजकोट, पुजरत 360004	सिंबई उपस्कर-स्प्रिकलय फईप- विशिधिट फग ३ पोलीबीलीन पाईप भागा 1415t : भाग : 1999	2007/06 /18
9.	संप्म/प्ल-7414062	प्रमुख सोगॅट प्रा. लि., सर्वे सं. 83/1, गर्वेच अस् पेर्ड , कशुक्ता कोटडा संघानी, गर्वकोट, गुजरात	43 प्रेड स्त्रधारण फोर्टलैंड सीमेंट भामा 8112 : 1999	2007/05/31
i0.	मीएम/एल- 7479902	जियस सी हिर., गाँव नानकचया, तासुका मुंद, कच्च 370415	बुंडलिस वेल्डिस पाइवें पामा 5504 : 1997	2007/06/04
11-	सीएम/पल-7467285	परकंक्ट बेबरेजीज, 14, विकासनगर, चित्रा सिद्शर रोड् पानी की टंकी के सामने, भवनगर, मुबदव 364001	पैकंजकर पेय जल (पैकंजकर प्राकृतिक सिक्स्ल जल के अलावा) विशिष्टि प्रामा 14543 : 2004	2007/06/27

[संख्या सी **एम डी**-13:15]

ए, के. तलबार, उप महानिदेशक (पुहर)

New Delhi, the 30th July, 2007

S.O. 2137.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification)
Regulations. 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

SIL No.	Lidence No.	Name & Address of the Licensee	Article/Process with Relevant Indian Standards Covered by the Licence	Date of Cancellation/ the Licence Cancelled/ Suspension
1	2	3	4	\$
1.	CN/AL-7471276	M/s Jay Khodiyar Industries Hariom Society, Kothariya Ring Road ;Rajket-360004, Gujarat 360004	TS 14543 : 2004	2007/05/01
2	CN/1_7591286	M/s A-One Coment Industries 8-A, National Highway Opp. Annual Pulse Mill, Timbadi, Morbi, Disti : Rajkoi Gujarat 363642	18 8112 : 1989	2007/06/22
3.	CNI/L-0767868	M/s Excel Crop Care Ltd., 6/2 Ruvaparl Road, Bhavaagar, Gujarat 364005	IS 4344 : 1978	2007/06/13
4,	CNU/L-2224436	M/s Solar Packaging Pvt. Ltd. Shri Amarsishji Mills Compound, Stailon Road, Wankamer, Distt: Rujkot, Gujarat-363622	IS 4174: 1977	2007/05/03

1 2	3.	4 .	5.
S. CM/L-7245166	M/s. Amar Jyot Poly Chem. Pvt. Ltd. Plot No. 2222, Lorinium GIDC, Opp. Radhe Wey Bridge at Metoda Tul. Lodhika, Dist: Rajkot, Gujarat-364458	IS 4984 : 1995	2007/05/30
6. CM/L-7315868	M/s. Khyati Polymers 1/4, Samrat Industrial Area, Neur Ban Lah, Dr. Vilnaro Sambhai Marg, Goadal Road, Rajkot, Gujrat 360004	IS 14151:Part 1:1999	2007/05/30
7. CM/L-7318268	M/s. Ashok Home Appliances Pvt £4d. Ashok Udyog Bhavan-D, Tunti Road, Mavdi Plot, Rajitot, Gujarat-360004	IS 4246 : 2002	2007/06/20
8. CM/L-737 4278	M/s. Krishna Plastics Gendal Road, Behind Mansatta Industries, Opp. Jagnath Marbles, Rajkot, Gojarat-360004	IS 14151: Part 1 : 1999	2007/06/30
9. CM/IL-7414062	M/s. Prausikh Cement Pvi, Lad. Survey No. 83/1, Village Artici, Tahaka Kotahaangani, Rajkot, Gujarat	IS 8112: 1989	2007/05/31
10. CM/L-7479902	M/s. Jiadat Saw Ltd. Villags: Nackaptya, Taluka Mundra, Distt. : Kachchb. Gujant-370415	IS 5504: 1997	2087/06/04
III. CMAL-7467285	M/s. Perfect Beverages, 14. Vishramsagar, Chitra-Sidear Road, Opp. Water Tank, Bhavnagar, Gajuna-364001	IS 14543 : 2004	201/06/27

[No. CMD/13:13]

A. K. TALWAR, By Director General (Marks)

. र्न्स दिस्सी, ३० कुलाई, २००७

का.आ. 2138,—बास्तीय सम्बद्ध स्कूरी (प्रमाणन) चिनियम, 1988 के विनियम 5 के वह विकित्स (६) के अनुसरण में सामीय सनक ब्यूने एक्ट्राम अधिस्थित करता है कि सिन्छी विकाण मीचे बस्तुसूची में दिए गए हैं को सुनके सूनी सामीय से स्तू कर दिश गया है :—

क्रम सं ख् रा	व्यक्तिस संस्था	ज़ाहितको ं का सम एवं पत	लक्सेंग के ओली केंग्नू जनम सम्बद्ध पारतीय प्रत्या प्रतिम	स्य कारने की निर्देश
1	2	3	4	6
1.	7330662	क्षित्र क्षत्र क्षेत्रकः क्षम वेदिनकः कन्त्रकृतः स्वत्रकः वेद्धः, गीतकः (कृषः), कृष्टं-400061	2148 : 1961 विस्कारी मैस अवस्थित से क्रिस विज्ञान के नुस्कृता ज्यालासह अकरण	

]	2	3	<u>.</u>	5
3-	7026659	खो: के. इलेक्ट्रोकरूस गाला सं. १. पहला मरला, मनीय इंडस्ट्रीयल इस्टेट सं. १. म नमर. वस्ट् रीसेट (पूर्व) जिला मा ने-401210	3854 : 1997 चरेलू और धमान प्रमोजनों के लिए स्विच	25-06-2007
3 .	7:4 <u>7</u> 88°	कॉमेट इंडस्ट्रीज, शर्मा इंडस्ट्रीयल इस्टेट, गाला सं. 3, उद्बोग मदन, वक्तमट सेंड, गोरेगाँव (पूर्व), मुंबई-440 063	2148 : 1981 विस्कोटी पैस पर्योकरणी के लिए विस्की के उपकरण-ज्जालासल आवरण	27 ()6 20()7

[सं. कंन्द्रोरा प्रमाणन विभाग/13 : 13].

ए, को तलकार, अपग्रहामिदेशक (मृहर)

New Delhi, the 30th July, 2007.

S.O. 2138.—In pursuance of sub-regulation (6) of Regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule: have been cancelled/with effect from the date indicated against each:

SCHEDULE

Sl. No.	Lirence No.	Name and Address of the licensee	Article/Process with zelevant Indian Standards covered by the hoence cancel	Date of Clancellation led
L	2	, 3	4	5
i.	7.8 30662	Comet Brass Product Nutan Chemical Compound, Waibhat Road, Goregaon (E). Mumbai-400063	2148: 1981 Flamepmof enclosures for electrical apparatus)7 06 2007
2	70 26659	D. K. Electricals Gala No. 1. Figu Floor, Manish Indl. Estate No. 1. Navgbar, Vasai Road (East) Distt. Theor. 401210	3854 : 1997 Switches for domestic purposes	25-06-2007
à.	7462881	Comet ladustries Sharma Industrial Estate, Gaia No. 3, Udhyog Bhavan, Walbhat Road, Goregaon (E), Mumbei-400063	2548 : (98) Plameproof enclosores for electrical apparatus	27-06-2007

[No.CMD/13:13]

A. K. TALWAR, Dy. Director General (Marks)

श्रम एवं रोज़गार मंत्रासम्य नई दिल्ली, 9 जुलाई, 2007

का.सा. 2139.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार तुंगमद्रा प्रामीण बैंक के प्रवस्तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बैंगहीर के पंचाट (संदर्भ संक्वा 5/2003) की प्रकाशित करती है, जो केन्द्रीय सरकार की 09-07-2007 को प्राप्त हुआ स्त ।

[सं. एल-12012/258/2002-आईआर(बी-1)] अक्वय कृपार, बेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 9th July, 2007

8.O. 2139.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the Award (Ref. No. 5/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Bungalore, as shown in the America in the Industrial Dispute between the management of Tungbhadra Gramin Bank and their workness, received by the Central Government on 09-07-2007.

[No. J.-12012/258/2002-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 26th June, 2007

PRESENT

Shri A. R. Siddiqui, Presiding Officer

C. R. No. 05/2003

1PARTY

B. Mahadevappa, S/o Shri Marricappa, No. MIG 59, KHB Colony, Gandhi Nagar, Bellary, Karnataka State.

II PARTY

The Chairman, Tungabhadra Gramin Bank, (Head Office), Gandhi Nagar, Bellary, Kranataka State

AWARD

 The Central Government by exercising the powers conferred by clause (d) of sub-section (2A) of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12012/258/2002-IR(B-I) dated 5th February, 2003 for adjudication on the following schedule:

SCHEDULE

"Whether the action of the management of Tungabhadra Gramin Bank imposing the possity of punishment of removal from services on Shri B. Mahadevappa is legal and justified? If not, what relief the workman is entitled?"

- 2. A charge sheet dated 17-09-1992, came to be issued against the first party (bereinafter called the workman) by the management on the allegation that be remained unauthorisedly absent from duty from 07-08-1991 to 20-12-1991 and also disobeyed the orders of the management to rejoin duty until 21-12-1991. It was further alleged that he also remained unauthorisedly absent from duty w.e.f. 01-02-1992 to 30-04-1992 and then absented from duty from 13-05-1992 onwards.
- 3. Another charge sheet data 16-03-1993 was issued against the workman on the allegation that he remained absent from duty without leave being sanctioned from 15-11-1992 to 29-01-1995 and thereby committed misconducts under Regulation 22 of the Tungabhadra Gramin Bank (Staff) Regulations, 1980.
- The workman appears to have given replies to both the charge sheets denying the allegations of unauthorised absence and the management not being satisfied with the explanations offered by the workman ordered DE to be conducted in both the charge sheets appointing the enquiry officer with intimation to the workman. He participated in the coquiry proceedings conducted against him on the aforesaid charge sheets separately and on the conclusion of the coquiry proceedings, the enquiry officer submitted his enquiry findings on 20-04-1994 in respect to the first charge sheet and on 21-5-1994 with regard to the subsequent charge. sheet holding the workman guilty of the charges of misconduct of unauthorised absence as alleged in both the charge sheets. By a common order dated 24-06-1994 the Disciplinary Authority while forwarding the findings of the enquiry officer to the first party proposed the punishment of removal from service by way of show cause notice calling upon him to furnish his representation within a period of 7 days from the receipt of the order with regard to the findings of the enquiry. officer and the penalty proposed. The workman submitted his comments and explanation over the findings of guilt recorded by the enquiry officer as well as by the Disciplinary Authority and on the proposed punishment, the disciplinary authority not being satisfied by the explanation submitted by the first party confirmed the proposed punishment by order dated 17-08-1994. His appeal against the aforesaid order came

to be dismissed by the Appellate Authority's order dated 09-12-1994. It appears that thereafter the first party raised the Industrial Dispute before the Conciliation Officer concerned and that resulted into the present reference proceedings.

- 5. Keeping, in view the contentions of the workman in his Claim Statement and the contentions taken by the management in its counter statement with regard to the validity and fairness or otherwise of the enquiry proceedings, a Preliminary Issue was framed on the said point and parties were called upon to lead evidence. The management examined the enquiry officer (common on both the charge sheets) as MW1 and got marked 14 décuments at Ex.M1 to M14. The first party examined hithself by way of rebuttal evidence and after having heard the learned counsels for the respective pasties this tribunal by order dated 20-10-2005 recorded a finding on the above said issue to the effect that the proceedings of enquiry conducted against the first party (workrdan) by the Second Party (Management) on the first charge sheet dated 17-9-1992 are not fair and proper and whereas, the proceedings of enquiry held against the first party by the second party on the second charge sheet were fair and proper. Thereupon case came to be posted for evidence of the management to prove the charges of misconduct levelled against the workman on the second charge sheet dated 16-03-1993. The management to substantiate the charges examined one witness as MW2 by filing his affidavit evidence and in his further experimetion chief got marked 33 documents. at Ex. M15 to M47, (which documents were already marked at MEx. I to 33 during the course of enquiry i. Once again, the first party examined himself by filing his afficavit evidence on merits of the case as far as the second charge sheet is concerned.
- The case of the first party workman as made. out in the Claim Statement on merits with respect to both the charge sheets, to put in autshelf is that the alleged unauthorised absence from duty referred into the aforesaid two charge sheets against him was due to the reason of sickness and he had submitted his leave applications and medical certificates, whenever, he remained abject from duty. By way of replies to the charge sheets he already has submitted that he suffered from mental disturbance and had to undergo the said problem during the aforesaid absence period. He also made it clear that he was taking treatment from 'native' medical practitioners and therefore, on certain occasions he could not furnish the medical certificates. As far as the findings of the enquiry officer on the 2nd charge. spect holding him guilty of the charges, he contended that there was absolutely no evidence to justify the finding of the guilt recorded against him as the management did not lead any legal evidence to establish. the charges of misconduct. On the other hand he

- examined himself to depose to the fact that he was suffering from illness supported by the evidence of his mother examined during the course of enquiry. He contended that the findings of the enquiry officer are based on 'no evidence' and contrary to the evidence on record suffering from perversity. He also challenged the action of the Disciplinary Authority in clubbing both the charge sheets and then passing the impugned punishment order on the ground that it suffered from violation of principles of natural justice. He challenged the order passed by the Appellate Authority, as well, contending that it failed to apply its mind in the requirements of Regulation 31. Lastly, he contended that the impogned punishment order in removing him from service is grossly disproportionate and shocking and therefore, he requested this tribunal to allow his reference. by passing an award sening aside the impagned punishment order passed against him with relief of reinstatement and all other consequential benefits.
- The management by its counter statement while. repeating the charges of misconduct levelled against the first party in both the charge sheets contended that after conducting the DE against the first party giving him fair and reasonable opportunity to participate in the proceedings, the enquiry officer having considered the oral and documentary evidence produced before him rightly, came. to the conclusion that charges of misconduct against the first party have been proved and be has rightly been imposed. with the punishment of removal from service keeping in view. the gravity of the misconduct committed by him. The management contended that the charges of misconduct of unauthorised absence levelled against the first parry hadnever been denied by him during the course of enquiry except. his self conflicting defence that some times he has submitted. the medical certificates and some times contending that he look treatment from native Doctors being unable to obtain any medical certificate for the period of his absence from duty as mentioned in the charge sheets. The management also took up the contention that the reference on hand itself. deserves to be rejected on account of abnormal delay in raising the dispute before the concerned authorities as he was removed from service by order dated 17-08-1994, his appeal was dismissed by order dated 09-12-1994 and whereas he approached the conciliation officer by raising the dispute On 11-03-2002 i.e. after a period of 8 years that too without offering any satisfactory explanation for the delay caused in raising the dispute. Therefore, the management requested this tribunal to reject the reference.
- 8. Now keeping in view the finding recorded by this tribunal on the first charge sheet dated 17-09-1992 holding that the DE held on the said charge sheet was not fair and proper, let us in the first instance find out as to whether the charges of misconduct of unauthorised absence levelled in the said charge sheet have been substantiated by the management by leading evidence on merits before this tribunal.

9. MW2, who happened to be the Branch Manager during the period the first party remained absent from duty as alleged in the charge sheet has filed his affidavit before this tribunal giving out the details of the charge sheet with reference to the aforesaid documents at Ex. M 15 to M47. His statement at Paras 2 to 4 in the affidavit running as under:—

"The first party while he was working at Somesamodra branch of the second party bank by submitting an application dated 08-08-1991 absented himself from work from 07-08-1991 and sought leave on medical grounds for the period. 07-08-1991 to 14-08-1991 without submitting the Medical certificate. He did not report for work on 16-08-1991 and continued to remain absent unauthorisdedly. His absence was reported by the branch to the head office and the head office of the second party bank sent letters to first party calling upon him to report for work and to explain the reasons for his unsuthorised absence. The tetters addressed to first party bearing. No. STF PW OLS 3085 91-92 dated 24-09-1991, STF PWOLS 3426 91-92 dated 11-10-1991, STF PW OLS 3796. 91-92 dated 13-11-1991 is produced horewith and marked. The first party had received the letters dated 24-09-1991 and 11-10-1991 and the postal acknowledgement received therefore is produced. as exhibits. The letter dated 15-11-1991 was retuned undelivered. Despite the above letters the first party neither replied letters nor reported for work till 21-12-1991 and also did not produce any medical certificate as required under the roles of the second party bank in support of his absence. even at the time of resorting for work. The first party also did not submit any explanation for his unauthorised absence even after reporting for work and therefore the unauthorised absence of first party for 136 days was treated as leave without pay by second party bank wide payoccolings of the Chairman no. STF TGB GEN Classified 91-92 dated 13-01-1992 with right to initial additional section for the same as it constituted 4 1 moonshut within the provisions of Second Party bank service regulations.

Again first party on 01-02-1992 availed a day's leave and although was required to report for work on 03-02-1992 (02-02-1992 being boliday) be absented from work without any leave being granted and by submitting leave application on 04-02-1992, 07-02-1992 had sought medical leave without submitting any medical certificate as required under the leave rules of the second party bank. The Second party bank had called for his explanation for his unauthorised absence by serving him a letter STF PW OLS 4993 91-92

dated 21-02-1992. The first party acknowledging the said letter sent a letter dated 27-02-1992 with offering any explanation for his anauthorised absence and assured to report for work un 29-02-1992. But he failed to report for work even on 03-03-1992 as required and hence he was again. served with a memo No. STF PW OLS 6566 91-92 dated 30-03-1992 and was directed to report for work and explain the reasons for his unauthorised abence. Despite the said letter first party failed to report for work and he joined duties only on 02-05-1992 by submitting a letter of even date. Not only he did not offer any explanation for his unauthorised absence from 01-02-1992 till 30-04-1992 but also did not submit any medical certificate in support of his absence on medical grounds as claimed by him. Therefore, the unguthorised absence of first party for 90 days. was treated as leave without pay by the second party bank wide proceedings of the Chairman No. STF TOB GEN OLS 253 91-92 dated 21-05-1992 with right to initiate disciplinary action for the same. as it constituted a misconduct within the provisions of second party bank service regulations.

Similarly the first party absented from work unauthorised from 13-05-1992 to 10-09-1992 and he failed to offer any explanation for his unauthorised absence despite he was sent letter STF PW OLS 1171 92-93 dated 27-05-1992 and his absence for the said period was treated as leave without highly by serving on him proceedings of the Chairmanno STF TGB GEN OLS 1588 92-93 dated 13-01-1993 with right to initiate disciplinary action for the same as it constituted a misconduct within the provisions of second party bank regulations."

During the course of his cross examination by the first party nothing worth was elicited from his mouth so as to shake his testimony on the material particulars of the case as deposed by him in the affidavit. The suggestion made to MW2 that first party was submitting. leave applications for the period of his absence and that he went on leave for his absence period his leave being sanctioned have been denied by the witness. The suggestion that the first party submitted his medical certificates many times and some times his leave letters. were not accompanied by medical certificates, he being treated from the native doctors was also dealed by MW2. Except the afmessid suggestions nothing worth was brought out in the cross examination of MW2 to speak to the fact that the absence of the first party during the period mentioned in the charge sheet was an authorized absence and not an unauthorised absence.

11. The first party in his affidavit at Para 3 averred that it is due to his ill health, he could not attend the duty during the period from 07-08-1991 to 14-04-1991 and at that

time he was taking treatment from native Vydhya and that he has subnitted leave application for the absence period. He stated this whenever he was absent from duty he availed leave as per the bank Regulations. He stated that his absence from duty was beyond his control and not with any malafide intention. He could not submit the medical certificate being treated by partive Vydhya and medicanes. At Para 4 of the affidavit he stated that as he was not keeping wall, he was not in a position to make any correspondence with the bank. At Para 5 he stated that his absence was on account of his illness and he submitted leave applications some times being accompanied by medical certificates. During, the course of his cross examinationihe admitted that he remained absent from duty from 07 08-1991 to 20-12-1991 by giving reasons in his leave applications that he was suffering from joint pains and stomach ache. He admitted that though he asked for 8 days leave but remained absent continuously for 136 days. He stated that he has given medical certificates and denied the suggestion that he has not furnished any medical certificate déspite several reminders by the management made to him! He admitted that again from 01-02-1992 to 30-04-1992 f.e. continuously for 90 days be remained absent though according to his leave application, he had sought leave for two days only. He admitted that once again from 13-05-1992 to 10-09-1992 i.e. for about 123 days be remained absent applying the casual leave only for two days. When he was confronted with his reply to the charge sheet marked at Ex. M39 be admitted that the reason for his absence given in the said cepty were family problems i.e. his sister leaving the house without any trace and health problems.

During the course of arguments learned counsel for the management submitted tha the charges of misconduct of unauthorised absence levelled against the first party as levelled in the first charge sheet have nor only been proved by the statement of MW2 and documents. but also by very of the very admissions made by the first party in histoross examination. He contended that absolutely normedical certificate for any period of absence was submitted by the workman either while proceeding on leave or at the time of joining the duty at any time, thereafter. He contended that the stand of the workman that he was suffering from ill health thereby not able to attend duty is again self conflicting as in his reply to the charge sheet he has given reasons of his absence from duty other than his ill health. Therefore, learned counsel submitted that the first party not only remained absent from duty unauthorisedly but failed to report duty despite the several letters issued to him to report for duty making it clear to him that the period of absence from duty has been treated as uriauthorised absence. Therefore, thereby he committed the misconduct of remaining unauthorisedly abasent from duty and so also in disobeying the orders of the management to report for duty,

33. Whereas, learned counsel for the first party, submitted that the first party had been submitting his leave.

applications from time to time and could not submit the medical certificates being treated by the native doctors

14. After having gone through the records, I find substance in the arguments advanced for the management. As seen above, MW2, the their Branch Manager, under whom the first party worked during the relevant period, in his affidavit in no uncertain terms has narrated the details of the period of authorized absence from duty by the first party and also has referred to the various documents and letters where under the first party was called upon to give his explanation with regard to his anauthorised absence and also to report for duty immediately.

As noted above the above said statement of MW2 lias not at all been challenged during the course of his cross examination. Not a single suggestion was made to MW2 when he stated that the absence of the first party from duty during the leave period was unauthorised absence and that he failed to report for duty without any explanation for his unauthorised absence despite receiving the letters from the management. The suggestion made to MW2 for the first party to the effect that he always wern on leave after the leave being sanctioned and that he submitted medical certificates some times along with leave applications and some times he could not submit the medical certificates being treated by the native doctors as noted above, has been denied by MW2. Moreover, these are the suggestions made on behalf of the first party without there being any evidence being produced by him suggesting to the fact that his period of absence was always against the sanctioned leave and his leave applications were accompanied by the medical certificates. On the other hand, the cat comes out of the bag when the first party was subjected to cross examination by the management. He, in no uncertain terms admitted in the first instance the fact that though he asked for eight days leave (from 07-08-1991 to 14-8-1991) he remained absent continuously for 136 days. He further admitted that from 01-02-1992 to 30-04-1992 i.e. for continuous 90 days he remained absent from duty though he applied leave for 2 days only. He then admitted that once again from \$3-05-1992 to 10-10-1992 i.e. for about 123 days he remained absent though applied cusual leave for two days ordy. Therefore, from the above said statement of the first party himself it becomes crystal clear that his absence from duty was not against the sanctioned leave. For the first time he was sanctioned leave just for a period of 8 days but remained absent from duty for a period of 136 days. On the second. occasion he was absent from dury for 90 days though his leave application was only for two days. Similarly, on the 3rd occasion be remained absent from duty for a period of 123 days though his leave application was only for two days. In the face of the above said admissions by the first party it was too much for him how to take a stand in the cross examination of the MWI suying that his absence was always against the leave sanctioned. Now, coming to

his statement that some times he submitted medical conflicates for the treatment he received and worse times he could not do so, the treatment being given to him by the native doctors. There was no evidence produced by him to the above effect. Infact at no time his leave application was accompanied by any medical certificate. This fact he admits in his affidavit itself, but denies it during the course of his cross examination before this tribunal. Therefore, there cannot be any hositation for this tribunal to come to the conclusion that except for the period of 8 days on the first occasion and for 2 days each on the second and third occasions, his absence for the remaining period shown in the charge sheet was unauthorised absence, a misconduct under Regulations 22 of the aforesaid regulation named by the management hank. In the result, it must be held that charges of unauthorised absence as mentioned in the charge sheet coupled with the charges leveled against him in not reporting for duty despite the several letters served open him to do so, have been proved by the munagement by sufficient and legal evidence.

Now coming to the 2nd charge sheet dated 16 03-1993. As already noted above, the DE conducted into this charge sheet is held to be fair and proper. In the face of the finding recorded by this tributal, an heavy burded was cast upon the first party to establish before this tributual that findings of the enquiry officer suffered from perversity. On going through the findings of the enquiry offices. I do not find any substance in the arguments advanced for the first party so as to suggest that finding suffered from perversity. Here again the fact that the first party remained absent from duty for the period mentioned in the charge sheet has never been denied by him except taking the contention that it was once again on account of his ill health and that he could not produce the medical certificates being weated by the native doctors. In order to substantiate the charges, the management during the course of enquiry produced the two leave applications dated 31-10-1997, and 16-11-1992 made by the first party and the various letters written by the bank to the first party in keeping him informed that his period of absence has been (reated as unauthorised absence as it was the absence not against the sanctioned leave. The enquiry officer has given his sound and rogent reasonings in coming to the conclusion that the charges of misconduct have been proved against the first beyond any reasonable doubt. I feel it is necessary and worthwhile to bring on record the very reasonings given by the enquiry officer in holding the workman guilty of the charges found on pages 7 to 10 of the enquiry report under the heading "My Observations to above issues" as under :---

MY ORSERVATIONS TO ABOVE ISSUES:

(i) Whether charge sheeted employee has applied for leave from 09-11-1992 to 14-11 1992 and same was sanctioned by head office and at the time of sanction whether charge sheeted

employee was strictly instructed to report back for duty on 16-11-1992. From the exhibit M.E. iit is clear that the charge sheeted employee had requested six days P1, from 09-11-1992 to [4-]1 5992 on account of younger sister marriage fixed on 12th November 1992. As per exhibit ME.8 it is clear that the head office has sanctioned PL from 69-11-1992 to 14-11-1992 under reference OLS 1119, 92-93 dated 05-11-1992 with a strict instructions to report back for duty to 16-11-1992 and it is also mentioned that no more extention. On the other hand defence has not disputed about these documents. Hence, it is established that charge sheeted employee has applied leave from 09-11-1992 to 14-11-1992 and same was sanctioned by head office. Charge sheeted employee was strictly instructed to report back. for duty on 16-11-1992.

(2) Whether charge sheeted employee has extended leave upto 19-11-1992 without prior saliction from head office against the said instructions and whether he was expected to join back (or dusy on 20-11-1992).

From exhibit M.E.2 it can be seen that charge sheeted employee has extended leave upto 19-11-1992 due to unavoidable circumstances. He has stated in the tetter due to some functions in connection with his sister marriage, he is requesting to consider the extension of leave upto 19-11-1992 and this extension of leave is not having prior sanction. On the other hand defence has not disputed this document hence, charge sheeted employee has extended leave upto 19-11-1992 without prior sanction from Head Office and charge sheeted employee was expected to join back for duty on 20th November, 1992.

(3) Whether charge sheeted employee continued to remain absent without any further information and without sanction from 15-11-1992.

Presenting Officer has relied upon M.E. 3 to M.E. 7. M.E. 3 is the letter written by Somasamudra branch manager to senior Manger. Staff Section, head office Bellary under reference TGS.SD STF 61fO 92-95 VSS 214 dated 21-11-1992 wherein he has stated that charge sheeted employee has so far not resumed daties ME4 is the letter written from Somasamudra branch to General Manager. Staff Section, HO, Bellary under reference TGS.SD 61fO STF 97-92 VSS 230 dated 26-11-1992, wherein he has stated that

Shri B. Maladevappa not reported for duty. M.E.5 is the letter written, by Somasmudes branch to the Sr. Manager, Staff Scotion, HO. Buildry under reference TGBSD 6R(0.92.93V8S)darce 01-12-1992 wherein he has stated that Shri Mahadeyappa has not come to the Baris Since $09 \cdot 11 \cdot 1992$. As per M.E.6 it is elear that Shri B. Mahadevappa has not report for duty (iii) 30-12 (1992) As per MJE.7, in is clear that Shri B.M. Mahadevappa has remained absent and not come to the branch on the outer nand Defence has not disputed about these documents, hence it is clear that the charge sheeted employee has continued to remain absom without any further intermation and withour sauction from (5-11-1993)

- (4) Whether on explanation was called to join back for duty somediately, Presenting Officer has relied upon M.P. 10, as per this a letter has been sent in Shri B.M. Mahadevappa from Sr. Manager, Staff. Section, Head Office, Bellary. It has been stated that charge sheeted employee has neither submitted leave application not reported for duty. Remaining absent for daily without any message amounts. to unauthorised absent, Inspite of several advises, charge sheeted employee has confinded to old habit of remaining unauthorised absence for duty. He has been instructed to report back for duty immediately I urther an explanation was also called from him. On the other hand Defence Representative has not disputed these documents. Hence it is elear that Bank has called an explanation to join back for duty immediately.
- (5) Whether charged sheared employed has reported back for duty only on 30 191-1903

As per exhibit M.L. If it is clear that charge sheeted employee has reported for duty on 30th January, 1993 and in the said letter be has not mentioned, the reasons for the long absence. On the other hand Defence has not disputed about the said document. Hence it is clear that charge sheeted employee has reported for duty on 50kOi+1993 enly.

(6) By remaining absent without satisfuor of lance from 15-33, 1992 to 29-01-1993 whether charge sheeted employee has violated guidelines of the bank and regulation 22 of the T.G. Bank is slaff Service Regulation 1980.

Presenting Officer has stated that charge sheeted employee has remained absent for

duty from 15-11 1992 to 29-01-1993 basing on the exhibit M.E. 9. (Proceedings of the Chairman treating the said period as one without sanction). M.E.14 (extract of abordance signing register). ME.13 extract of anerclance marking register this clearly shows that the said period has been treated as one without sanction. On the other hand Detence Representative has taken the plea that charge sheeted employed has availed leave from 15-11 1992 to 29-01-1993 and reasons for availness was iff health. He has also stated that he has taken treatment from local Doctors who will not assue any certificate so he camput produce the certificate.

If the above contention of DR is true charge socied Employee would have mentioned the same whole joining for duty (i.e. M.E.31.) and immediately after receipt of proceeding of Chairman freating the above period as absent Herees, I am of the opinion that the plea of the DR that charge sheeted employee was suffering from ill bealth und raken treatment. from local Ductor is far from truth and created. for the purpose. So his plea is not acceptable As per exhibit M 15.15 and M.F. 16 it is clearly advised that Medical certificates should be submitted along with leave application immediately after keeping finaself absent for day form staff member bence plea of Defence Representative is not acceptable as per exhibit M.E. 36.

Basing on the arrove findings discussed to detail under \$1. Nos. I to 6 it is established that Shri B. Mahadevappa had applied leave room 9-11-, 992 to 14-11-1992 i.e. fix six days and it was sanctioned from Head Office, While sanctioning the leave he was strictly instructed to repent back for duty from 16, 11-1902, charge. shapted employee extended the leave upto-19 14 (1992) *(adv* his letter dated 16 14 1992. Though he was expected to report back for duly on 20th November, 1992, he continued to remain absent without further information from $95.47 \cdot 1992$ to $39.04 \cdot 1993$ (i.e. for $76 \, \mathrm{days}$, by has violated the guidelines of the Bank and also Service Regulations. It is also established that an explanation was called for his absence. olde letter dated 07-72-1992. Charge shoeter employee's long absonce has also effected normal functioning of the back, thus the employee has committed an act of misconduct furnishable under Service regulation 300. If readwith regulation 22:21 of Tungabbadia Gramm Beek (Staff) Service Regulation (986) "

16. Therefore, from the reading of the afor and reasonings given by the enquiry officer, by no stretch of imagination it can be said that his conclusion in holding that the first party committed the misconduct of unauthorised absence was without any sufficient and legal evidence. The enquiry officer in length has discussed the eral and documentary evidence produced before him and has rightly come to the conclusion that the first party committed the misconduct of unauthorised absence from duty for the period mentioned in the charge sheet. Therefore, findings of the enquiry officer being supported by sufficient and legal, evidence, in turn, supported by eagent and valid reasonings by no stretch of imagination they can be termed as perverse to be interfered at the hands of this tribunal, in the result, it is to be held that the charge of misconduct leveled against the first purty in the second charge sheet also stands proved.

17. Now, coming to the question of quantum of the ponishment. It was well argued for the management that it e first party is a chronic absencer having absolutely on regard for his dury and that because of his prolonged unauthorised absence, the management hank's functioning has been affected causing inconvenience to its customers or large. As seen from the first charge sheet, he remained agsent from duty for a total period of 226 days and whereas as per the second charge sheet his period of absence was 76 days only. Though he claimed to have suffered from ill health, produced no medical certificates either along with the leave application or while reporting for duty. Infact, as noted above, he remained absent from duty against the leave sanctioned only for about a period of 12 days and for the rest of the period he was remaining absent annumorisedly even without leave applications, much less. deing accompanied by any medical certificate. The stand taken by him that he was being treated by the native doctors has not been supported by any evidence except his selfserving statements. Therefore, keeping in view the conduct of the first party, in my opinion he deserves no sympathy post the hands of this tribunal. He deserves no punishment lesser than removal from service. The reference on hand as controlled for the management also is not entertainable for the inordinate delay of 8 years caused in raising the dispute. The first party gave no reasons or offered any explanation as to what prevented him not to raise the (Sepure for about a period of 8 years after his appeal against the impugned order was dismissed by the appellate commercy. This conduct of the first party again tells the tale upon his conduct that he was never diligent and interested either to perform his duties or to continue his services under the management. The bank institutions custication after dan employee like the first party who remains absent from duty for no good reasons affecting smooth functioning of bank business. In the result, reference deserves no merit and hence the following award

AWARD

The reference stands dismissed. No costs.

(Dictated to PA transcribed by her corrected and signed by me on 26th June, 2007).

A. R. STDDIQUI, Presiding Or Feet नई किल्ली, 9 जुलाई, 2007

का,आ. 2140.— औद्योगिक विवाद अधिनियम, १०३१ (1947 का 14) की बारा 17 के अनुसरण में, केन्द्रीय सरकार तुंगमहा ग्रामीए जैंक के प्रवंपतंत्र के संबद्ध नियोजकों और उपयो कार्यकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में कन्द्रीय सरकार औद्योगिक अधिकरण, वैंगलीर के पंचाट (संदर्भ संख्या 09/1994) को प्रकाशित करती है, को केन्द्रीय वरकार वर्ष 09-07-2007 को प्राप्त हुआ था।

[सं. एल-12012/227/93-आई झा.(की-1)] अक्रय कुमार, डेन्क अधिकाने

New Dolhi, the 9th July, 2007.

S.O. 2140.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 09/1994) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore, as shown in the Annexure in the Industrial Dispute between the management of Tungabbadra Gramina Bank and their workmen, received by the Central Government on 09-07-2007.

[No.L-120] 2/227/93-IKTB QI AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE 560022

Dated : 22nd June, 2007

PRENENT:

Shri A. R. Siddiqui, Presiding Officer C. R. No. 09/1994

I PARTY

The General Secretary.
Tongabhadra Gramin Bank
Employees Union,
144, Kappgal Road,
Bellary-583 103

∏ PARTY

The Chairman, Tungabhadra Gramin Bank, No. 32, Sanganakal Road, Gandhi Nagar, BELLARY-S83 103

AWARD

I The Central Government by exercising the powers conterred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-12010/2017/03-IR (B-I) dated 3rd January, 1994 for adjunication on the tollowing schedule?

SCHEDULE

"Whether the action of the management of Tungabhadra Gramin Bank in imposing the penalty of Suppage of Seven increments with cumulative effect in respect of Shri T. Basavareddy. Clerk vide proceedings dated 27:03-1992 is legal and justific d? If you to what relief the workman is entitled."

L/A ; berge sheet dated 24-02 -1990 came to be issued at the first party workings in the following terms .

"Whetras those are prima focie grounds for believing that you have been guilty of misconduct, the particulars whereof are given below, this charge sheet has been drawn up against you and you are hereby request to submit to me within 7 days of receipt of this criange sheet, a statement in writing satural forth your defence. I any and showing cause as to why again priate penalty should not be imposed upon that

CHARGE:1

Write you were working at Gintgera Branch, you an a stript outside activities and involved yourself it a strong cots belling business. During June-July, 1980 period you sold around 70 Kgs, of Cohosseeds to verifice Termers of Ginagera and surrounding things. According them include following farmers of mater # 9 Village.

- Stali Sarvappa S/o Sarrappa.
- Bushosab Sto Bahasah Bagali
- 5 Seddagger Upper S/o Knirappa
- Mehdun Sab Sab Hussain Sab
- 5 Nikakappo S/o Ningappa Ginigera,

Attorng these persons form S. No. 1 to 3 have availed Chapit and Iron out Glorgera branch

The have sold the collenseeds to the said carmers by informing them that they were of "DCH32" variety whereas they were not of that standard or quainty. The fattners mak it for granted because of your wideled costion and came to know that the seeds have to quality seeds only after about 2 months of \$100.00, by wherea time the farmers had made not siderable cavestment on the crops by way of 100.00.00 pesticates, labour charges etc. Because of

the duplicate and sub-standard seeds supplied by you the farmers have not only lost the investment made on the entry but also have institlent valuable crop itself.

You have thus caused heavy loss to the farmers who had purchased the seeds from you which altimately resulted in complaints and loss of image to the lonk. Hence, you above sale of seeds is derineed to the inferests of the bank. By using your official position for profit and by acting him matter derrimental to the interests of the bank you have committed misconduct under Regulation (30(2)) of TGB. Staff Service Regulations, 1930.

CHARGE: 2

While working as hunor Clerk at our Gingers branch you have sold about 70 Kgs, of cottonseeds to fativers/bustomers of surrounding visiages of Ginigera. You have thus involved yourselving sabsidiary services of earning. As per Regulation No. 21 of TGB (Staff) Regulations, 1980 to which you are bound, you were supposed not to engage yourself in any activity putside the scope of your employment without the express prior permission from the competent authority. By indulging yourself in the activity of stiring contenseess you have committed hiesen of the said aggulation No. 21 of TGB (Staff) Regulations, 1980, and by committing breach of the said Regulations of 21 of TGR (\$, \$). Service Regulations, 1980 von have commined misconduct under Regulation 30 (1) of TGR (Singl) Service Regulations, (980) 11

 The explanation turnsshed by the first party not. being found satisfactory Donnestin Enquiry was ordered against him. On the canchasion of the enquiry proceedings. the enquiry officer subsouted his zepost cated 16-16-199). with a conclusion that both the charges fevelled against the first party in the charge sheet have not been proved. and that the first party is not guilty of the ploresaid charges. The Disciplinary Authority however, thd not agree with the findings of the enquity officer exonerating the larse party from the charges levelled against him and giving his own teasons held the workman guilty of the charges vide. under dated 20,001,1992 and sent this order copy of the first party along with the anguity report proposing the protehment of stoppage of seven increments with cumulative effect asking the first party to show cause in writing as to why the above setd penalty should and be imposed upon him. It appears from the enquiry records that in response to the said order of the Disciplinary Authority, the first party submitted his explanation dated 16-03-1992 as to why the enquery officer's faccings special he accepted and that the reasons given by the Disciplinary Authority in not accepting the same were against the evidence brought on record. However, the Disciplinary

Authority by the impugned punishment order dated 27-3-1992 rejected the above said explanation offered by the first party and confirmed the above said proposed punishment of stoppage of seven increments with containive effect. The first party then made an unsuccessful attempt in preferring appeal against the said punishment order to the board of Directors, Tungabhadra Granzeena Bank Head Quarter, Bellary as his appeal came to be dismissed by order dated 22-10-1992. The first party then raised an industrial dispute resulting into the present reference proceedings.

The first party in his claim statement chattenged. the very authority of the management in conducting the enquiry proceedings under the provisions of Tungabhadra Gramin Bank (Staff) Service Regulations, 1980 in the absence of certified standing orders of the management and took a contention that there being no certified standing orders as required under the Industrial Employment (Standing Orders) Act, 1946. With respect to the merics of the case the first party contended that after holding the enquiry, the enquiry officer submitted his report datest 36-10-1991 and after considering the evidence brought on record he came to the conclusion that the first party as not indulged himself in selling cottonseeds and there was no tian tage to the image of the hank. He came to the conclusion that both the charges levelled against the first party have not been proved and gave his findings accordingly. However, the Disciplinary Authority having no powers to differ with the findings of the enquiry officer under the aforesaid Regulations has given its own findings to the effect that on the basis of the evidence ted during the course of enquiry, charges of misconduct have been proved and he gave his findings contrary to the findings of the enquiry officer. The first party contended that before passing of this order in giving the findings contrary to the iindings of the enquiry officer, the Disciplinary Authority did not issue a proposition notice to him setting forth its proposel to differ from the findings of the enquiry officer along with the reasons therefore and called upon the first party to show cause as to why the Disciplinary Authority should not set aside the findings of the enquiry officer excocrating him from the charges. He was not given any notice and no opportunity was given to him in total contravention of the principles of natural justice and proposed the punishment of stoppage of seven increments with cumulative effect asking him to give representation on the quantum of the punishment itself. Therefore, the first party contended that the findings of the enquiry officer were well based on the evidence on record and the Disciplinary Authority was not justified in coming to the conclusion contrary to the findings of the enquiry officer and vince the order to the Disciplinary Authority suffered from violation of principles of natural justice not affording him apportunity of hearing before such punishment was proposed holding him guilty of the charges, is liable to be set aside as illegal, arbitrary and discriminatory in nature.

- The management by its Counter Statement while. contending that the Disciplinary Authority has got every right and authority to initiate the disciplinary proceedings. against the first party under the aforesaid Regulations rightly, conducted the enquiry proceedings and rightly differed from the findings of the enquiry officer in holding. the first party guilty of the charges. The Management: contended that after the enquiry findings were submitted to the Disciplinary Authority by the Enquiry Officer, on detailed examination it was found that the enquity officer did not appreciate the materials properly and has come to the conclusion only by relying upon the evidence of the first party workman and therefore, the findings were perverse. The Disciplinary Authority therefore, on going through the entire enquiry records came to the conclusion. that there was sufficient material on record to establish the misconduct committed by the first party workman and therefore, rejected the findings of the enquiry officer and issued a show cause notice dated 20-02-1992 proposing the punishment of stoppage of seven increments with cumulative effect giving the reasons to coming to the ennelusion that charges of misconduct were proved against the first party. Thereafter, the first party was called upon to submit his explanation if any, over the proposed punishment. Therefore, the management contended that the reasonings given by the Disciplinary Authority in holding the workman guilty of the charges as against the findings of the enquiry officer exponerating him from the charges was legat und justified in the light of the evidence. brought on record and that the first party by way of second show cause notice was given an opportunity of bearing on the quantum of the punishment and in the result, there was no violation of principles of natural justice and requested. this tribunal to reject the reference.
- 6. As, could be read from the order sheet maintained by this tribunal, on 19-1-1999 a memo was filed for the first party workman conceding the fairness and validity of the enquiry and with the consent of the parties the enquiry file papers were marked at Ex. M1. By award dated 1-6-2001, my learnest predecessor rejected the reference. Aggricved by this award the first party approached the Hon'ble High Court in Writ Petition No. 39265/01. His Lordship of Hon'ble High Court quashed the impugned award and remitted the matter back to this tribunal for fresh adjudication, expeditiously.
- 7. After the remand, I have heard the learned counsels for the respective parties and posted the matter this day for award. Therefore, in the light of the respective contentions of the parties and in the face of the finding recorded by this tribunal, that the DE conducted against the first party is fair and proper (being conceded by the first party) the point to be considered would be "whether the impugned panishment order dated 20-7-1992 passed by the Management/Disciplinary Authority in disagreeing with the findings of the enquiry officer in exomerating the

first party from the charges of misconduct leveled against him is legal and justified".

- Learneyl, counsel for the first party in his argument. submitted that the impugned punishment order suffered from violation of principles of natural justice as the Disciplinary Authority while disagreeing with the findings of the enquiry officer did not afford any opportunity of bearing setting forth the reasons in coming to the conclusion different from the conclusion arrived at by the enquiry offices. He contended that the Disciplinary Authority without setting forth the reasons and assuing proposition notice in disagreeing from the findings of the Enquiry Officer kno-motorecorded the findings of the guilt holding the workman guilty of the charges and issued a show a cause notice along with the enquiry report calling upon the first party to submit his explanation only on the quantum of the punishment. Therefore, learned counselsubmitted that if at all the Disciplinary Authority wanted to differ from the findings of the Enquiry Officer, it must have set out the reasons in detail with a proposition notice. as to why he should disagree with the enquiry findings. giving him opportunity of bearing on the point and since it has not been done in the present case, the principles of natural justice bave been violated and in the result, the impugned punishment is liable to be set aside. To support his argument learned counsel cited a ruling reported in AIR 1998 SC page 2713 - Punjab National Bank & Others Appellants V. Kunj Behari Misra. On the point that Regulations referred to supra do not confer powers upon the Disciplinary Authority to issue the charge sheet and conduct the enquiry proceedings, learned counsel referred. to a decision repêrted in ILR 1996 Kar 2069.
- Whereas, learned counsel for the management. vehemently, argued that the order dated 20-02-1992 passed. by the Disciplinary Authority in disagreeing with the fundings of the Enquiry Stricer has very much set out the reasonings based on the materials brought on record during the course of enquiry and this order was communicated to the first party along with the enquiry report seeking his explanation to the quantum of the punishment, and therefore, it cumpot be said that the first party was not given any opportunity of hearing before the impurged punishment order was passed. Learned counsel therefore. submitted that in passing the above said order, the Disciplinary Authority has very much complied and sabered to the principles of natural justice as contemplated. under the principle iaid down by their Lordships of Supreme. court in the case referred to supra cited on behalf of the first party. To support his arguments learned counsel also filed a copy of the decision of the Supreme Court reported. и: AIR 1998 SC 2713.
- 40. On going through the records, more so, the aforesaid order dated 20-02-1992 passed by the Disciplinary Authority and communicated to the first party

along with the report and in the light of the principle laid down by their Lordships of Supreme Court in the aforesaid decision. I am not inclined to accept the arguments advanced for the management that principles of natural justice have been adhered to by the Disciplinary Authority before passing the impunged punishment order. On the point as to what should be the procedure to be followed by the Disciplinary Authority while disagreeing with the findings of the Enquiry Sifficet in excoerating the delinquent concerned from the charges of misconduct alleged to have been committed by him, their Lordships of Supreme Court at Para 18 of the said decision laid down the principle as under:

"The Disciplinary Proceedings break into two stages." The first stage ends when the disciplinary authority arrives at its conclusions on the hasis of the evidence, Enquiry Officer's report and the delinquent employed's reply to it. The second stage begins when the Disciplinary Authority decides to impose penalty 00 the basis of the conclusions. It is necessary for the authority which is to finally record and an adverse finding to give hearing to the delinquent officer. If the Enquiry Officer had given an adverse finding, the first stage required an opportunity to be given to the employee to represent to the Disciplinary authority. Even when an earlier opportunity had been greated to them by the Enguary offscer, It will, therefore, not stand to reason that when the finding in favour of the definquent officers is proposed to be overtunied by the disciplinary authority then no apportunity should be grasted. The first stage of the enquiry is not completed till the disciplinary authority has recorded it findings. Under Regn. 6 the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is he disciplinary authority which can impose the penaity. and not the enquiry officer. Where the disciplinary, authority differs with the view of the auquity office: and proposes to come to a different conclusion, there is no season as to why an opportunity of hearing should not be granted. It will be most unfair and iniquations where the pharged of floors succeed before the enquiry officer they are deprised of representing. to the disciplinary authority before that authority differs with the enquiry officer's report, and, while recording a finding of guilt, imposes punishment or the officer. In any such situation the charged officer. must have an opportunity to regresent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This

is required to be done as a part of the first state of enquiry."

11. Therefore, from the reading of the aforesaid observations made by their Lordship of Supreme Court, it becomes crystal clear that the delinquent concerned cannot be deprived of representing to the disciplinary authority before that authority differs with the enquiry officers report and while recording a funding of guilt imposes punishment. on the officer (delinquent concerned). Their Lordship further held that in any such situation the charged officer. (the delinquent) must have an opportunity to represent before the Disciplinary Authority before final findings on the charge are recorded and punishment imposed. Therefore, in the light of the principles laid down by their Lordship of Supreme Court at the aforesaid para and the observations made by them at Paras 16 & 17 of the decision, it gets clear that the Disciplinary Authority in case of disagreeing with the coquiry officers findings must issue a show case notice to the employee concerned, giving himthe tentative reasons for is disagreement with the enquiry officers findings and after considering the representation. made by him to the show cause police, shall pass fresh. orders recording his reasons. It is further made clear that while doing so the Disciplinary Authority shall send the enquiry report along with the show cause notice issued to the first party. In the instant case as argued for the first party this requirement of issuing the above cause notice to the first party giving him the tentative reasons for disagreement to the enquiry officer's findings has not been fulfilled. In the instant case what the disciplinary authority. has done is that after it received the enquiry officer's findings, went through the findings and passed an order dated 20-02-1992 holding the workman guilty of both the charges levelled against birn in the charge sheet by giving out the reasons in coming to the conclusion that the first party was guilty of the charges. By the aforesaid order, the Disciplinary Authority proposed the punishment in question and called upon the fist party to show cause as to why the punishment should not be confirmed. Therefore, before passing this order in proposing the impunged punishement and recording the finding that the first party has been found guilty of the charges, the disciplinary authority did not given opportunity of hearing to the first party by issuing a show cause notice and setting out tentative reasons for its disagreement with the enquiry officer's finding calling upon his explanation as to why it should disagree with the findings of the enquiry officer. In the instant case the disciplinary straightaway after the receipt of the enquiry report held the first party guilty of the charges giving the findings of its own and then proposed the impunged punishment and the only opportunity of submitting the explanation given to him. was with respect to the quantum of the punishment and but on the point as to why the Disciplinary Authority

should differ from the findings of the enquiry officer. In the result, the principle laid down by their Lordship of Sopreme. Court which infact have not been disputed by the management also, must lend support to the case of the first. party that he has been denied the opportunity of hearing. by the disciplinary authority before the authority passed. an order giving findings against the first party holding him. guilty of the charges and before proposing the ponishment. of stoppage of increments, as noted, above. Therefore, inthe light of the aforesaid discussion, the only conclusion to be drawn would be that the order dated 20-02-1992 passed. by the disciplinary authority proposing the impugned. punishment resulting into the impugned punishment order dated 27-3-1992 suffered from violation of principles of natural justice and therefore, both the orders are liable to be set aside not being sustainable in the eye of law. In the aforesaid decision their Lordship of Supreme Court did not remand the matter to the disciplinary authority for the start of denova proceedings to give such an opportunity. of hearing to the delinquent concerned before the punishment order was passed as the dispute in the said. decision was more than 15 years old, one of the delinquent. being already dead and the other delinquent had been attained the age of superannuation. In the insum case also it appears to me that it will not be in the interest of justice in remanding the matter to the Disciplinary Authority to afford such an opportunity of bearing to the first party. before passing of the impugned punishment order as the dispute in the present case also is for the alleged misconduct committed in the year 1992 and we are now in the year 2007, a period of about 15 years having already. been clapsed. One more reason not to remand the matter. for fresh disposal to the disciplinary authority is the nature. of the alteged misconduct said to have been committed by: the first party workman not loosing sight of the fact that the findings of the enquiry officer have gone in his favour. In the result, the only order to be passed in this case would. be to set aside the impagned panishment order directing. the management to release the seven increments stopped. by it against the first party with consequential benefits. Hence the following award:

AWARD

The management is directed to release the seven increments stopped by it and shall reimburse the first party for the loss he sustain on account of stoppage of those seven increments from the date of the punishment order till today and herein cowards. No Costs.

(Dictated to PA, transcribed by her corrected and signed by me on 22nd June, 2007)

A. R. SIDDIQUI, Presiding Officer

Past H—Std. M(i)

नई दिल्ली, 11 जुलाई, 2007

का.आ. 2141.—औद्योगिक विवाद अधिनियम, 1947 (1941) क. १४। को श्रा 17 के अनुसरण में, केन्द्रीय सरकार है, सो, एल. के प्रबंधतंत्र के सबंद्ध नियाजकों और उनके कर्षकारों के बरेच, अनुबंध में निर्दिश औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आसनसौल के पैचाट (संदर्भ संख्या 19/1996) को प्रकाशित करती है, जो अन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

> [सं. एल-22012/485/5995-आईआर(सॉ-1[)] अजय कुमरर मौड, डेस्क अधिकारी

New Delha, the 11th July, 2007.

S.O. , 2141. In parsuance of Section 17 of the Industrial Diliputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/1996) of the Central Government industrial Tribunal-rum-Labour Coort, Asatisplas shown in the Annexure in the Industrial Dispute between the employers in relation to the stangement of ECI, and their workman, which was reversed by the Central Government on 11-07-2007.

(No.1-22012485/1995.JR (C-II)).

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Shri Md. Sarfaraz Khan, Presiding Officer Reference No. 19 of 1996

PARTIES: The Agent, Bahula Collicry of E.C.I... Burdwan

Ves.

The At General Secretary, Colliery Mazdoor Union, Ukhra, Burdwan.

REPRESENTATIVES

For the Management: StiP. K. Das, Advocate.

For the Union (Workman): Sri M. Mukherjee, Advocate

INDUSTRY: COAL STATE: WEST BENGAL

Dated the 25-01, 2005

AWARD

In exercise of powers conferred by clause (d) of Subsection (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), Govt. of India. Peologic Ministry of Labour vide its letter No. 1-220 (2/485/1995) TR (C III) dated 02-05-1998 has been pleased to refer the inflowing dispute for adjudication by this Tribunal.

SCHEDULE

"Whether the action of the management of Bolisla Colliery under Kenda Area of M/s. ECI, in dismissing the services of Sh. Sahden Majhi, Ivs.U.G. Loader is legal and justified? If not, what relief the concerned workman is entitled to ?"

- 2. After having received the Order No. L-22012/485/1995-IR (C-II) dated 02-05-96 of the said reference from the Govt, of India. Ministry of Labour, New Delhi, for adjudication of the dispute a reference case. No. 19 of 1996 was registered on 09-05-96 and occordingly an order to that effect was passed to issue notices to the respective parties through the registered post directing them or appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In compliance of the said order notices by the registered post were issued to the respective parties. Sri M. Mukherice, Advocate for the delinquent workman and Sri P.K. Das. Advocate for the management appeared and filed their respective statement in support of their case.
- 3. In brief compass the case of the union as set forth in the written statement is that Sh. Sahdeo Majhi was a permanent employee of Bahula Colliery under the E. C. Lul. The delinquent workman was compelled to remain absent from his duty w.e.f. 03-07-97 on account of his illness and he was undergoing medical treatment from different dectors nearby his native place of Girigon. Due to his such absenteeism the management has dismissed Shri Sahdeo Majhi from his service on 27-05-03.
- 4. The main case of the union is that no enquiry was ever held before dismissing the said employee or even if held, the workman was not given any opportunity to detend himself. Before the enquiry be was not even intimated that the enquiry is going to be held appined him. As such the dismissal order is illegal, arbitrary (whamsteal colourable, exercise of power and viniative of principle of natural justice)
- 5. It is also the case of the urnon that before assuing dismissal order the management did not supply the cuty of enquiry proceeding, unquiry report and proposed punishment is claimed to be absented thegal and fit to be set aside in this score alone.
- 6. The further case of the union is that by awarding capital punishment the management has snatched away the byely-hood and bread of the workman, causing great hardship to the family in these days of acute unemployment. The quantum of punishment imposed is claimed to be two harsh and thyproportionate to the gravity of the miscendict alleged. Accordingly the union has sought a relief for setting aside the dismissal order and to reinstage the workman to his service together with all the back wages and the order financial benefit with the continuity of the service.
- 7 On the other hand the defence case as per the averments made in its written statement is that the instant

reference as referred to the Hon'ble Tribunal is entirely misconceived and the same is not maintainable in law. Besides this there are no valid reason or ground for initiating any industrial dispute on terms of reference as referred by the appropriate Govt, for adjudication before this Tribunal.

- The main defence version of the management is: that Sri Sahdeo Majhi, Ex-U.G. Loader, Bahula Colliery was absenting from duty since 03-07-92 without prior permission. or authorized leave or any satisfactory cause and for which he was chargesheeted for his misconduct. Since the concerned workman was not available in the collicry, the copy of the charge sheet was sent to his home address. together with letter of enquiry vide letter No. Agent/BC/ C.6E/68 dated 17-02-93 and the copy of enquiry letter was also published in the local News Paper dated 25-02-93 published from Assessol, but in spite of the publication and sending letter to the home address the concerned workman neither appeared hefore the Enquiry Officer nor sept any wratten intimation stating the reason of his inability to attend the enquiry and as such the enquiry was held ex-parte. The said enquiry officer after holding the enquiry proceeding submitted his findings before the competent authority who subsequently after considering the said enquiry proceedings, its report, chargesheet and other connected papers of the said employee awarded a punishment of dismissal from his service. The copy of the order of dismissal was sept to the concerned workman vide letter No. Pers/KND/Termination/1791 dated 27-05-93.
- 9. Lastly the contention of the management is that the order of dismissal was rightly passed by the competent authority in accordance with the provisions of Standing Orders applicable to the establishment. The management densed the contention of the union made in its written statement claiming them to be totally wrong, baseless and beyond the scope of truth. The punishment is also claimed to be not disproportionate rather the same is just, proper, legal and the union is not entitled to get any relief or reliefs us prayed for.
- 10. From perusal of the record it transpires that on 03-09-98 a hearing on preliminary point was made and the validity and fairness of the enquiry proceeding was held to be invalid. It is further clear from the order sheet dated 16-10-98 that the request of the management, an adjournment was granted for filling the affidavit of the wirness and other documents. The order sheets further indicate that right from 27-11-98 to 25-03-03 several adjournments were granted to the management for adducing evidence but to no effect and ultimately the evidence of the management has closed and the case was fixed for hearing. The argument enhanced by the parties were heard in detail on 25-01-05 and the award was reserved for order.
- 11. In view of the pleadings of the parties and the materials available on the record I do find certain facts.

- which are admitted by the respective parties. So before entering into the discussion of the ment of the case I would like to mention those facts which are admitted one.
- 12. It is the admitted fact that Sh. Sahdeo Majhi, Ex-U.G. Loader was the permanent amployee of Bahula Colliery under Kenda area of M/s. Eastern Coalfield Limited.
- 13. It is also the admitted fact that the delinquent employee was absent from his duty with effect from 03-07-92 to 11-11-92 without any leave or prior permission and information to the management.
- 14. It is further admitted case of the parties that the workman concerned was chargesheeted on 11-11-92 for his unauthorized absence from duty w.e.f. 03-07-92 to 11-11-92 and an Ex-parte domestic enquiry was conducted by the management holding him guilty for the misconduct of unauthorized absence for the said relevant period in question.
- . 15. It is also admitted fact that there is no chargesheet against the workman concerned for being habitual absence. It is the settled principle of law that the facts admitted need not be proved. Since these all facts are admitted one, so I do not think proper to discuss the same in detail.
- 16. On perusal of the records it transpires that none of the parties has examined any oral witness in support of their case rather they have filed Xerox copies of some documents. The management has filed the Xerox copy of the chargesheet, enquiry proceedings along with the reports, notice of enquiry proceeding dated 17-02-93 and one Local News Paper Dainik Lipi of Asansol.
- 17. Likewise the union has also filed treatment paper of Sh. Sahdeo Hansda issued by Mohulpahari Christian Hospital for the disease of U.T.L., Prescription dated 28-7-92 granted by the Dr. V.N. Singh, C.A.S., Palajori, Deoghar, pathological examination report of urine of the concerned workman dated 07-04-93 granted from Aftab Hospital Pachambe Gundih and prescription issued by Aftab Hospital, Giridih.
- The management in para I of its written statement. has taken the plea that the instant reference is but in the eye of law as the same is legally not maintainable. It is also claimed that in the prevailing facts and circumstances of the case the dispute is misconceived one. But the aforesaid issue was neither raised not pressed by the management during the course of hearing of the said reference. The management has neither examined any oralwitness por tendered even a chir of paper in support of its plea. As such I do not find any defect in the maintainability. of the reference and the facts of the case very well comes. under the purview of Industrial Disputes Act. The Govt. of India through the Ministry of Lubour has rightly referred the dispute to this Tribunal for its adjudication and as such this issue is decided in favour of the union and against the management.

- 19. Admittedly the management in order to prove the fact that the chargesheet vide letter No. Agent/BC/PD/ C-bE/S1/92/789 dated 11-11-92 and letter of enquiry vide. letter No. Agent/BC/C-bE/68 dated 17 02-93 were sent to the home; address of the delinquent workman has filed the Xerox copies of the said documents but in spite of giving several opportunity to the management to produce the pean boxik or any other proof to show that the chargesheet was ever served or that notices were served on or offered in the workman, the management hopelessly failed to controlly or produce the said relevant documents in support of its contention. Besides this the publication of the enquity letter in the Local News paper dated 25-02-93. published from Asansol is also not helpful to the management because of the fact that the delinquent workmands home address as of the district of Dumka where this I coul News paper of Asansol is not expected to be available. As such keeping in view of these all relevant facts the then Presiding Officer of this Tribunal has rightly held the enquiry proceeding to be unfair and invalid. Apart from this fact the management was subsequently given several opportunity to prove the fairness and validity of the enquity proceeding by examining the witnesses and tendering the concerned relevant documents before the cour, of tribunal but the management atterly failed in this regard. It was the bounders duty of the management to show and prove before the court of tribunal that the communication was sent on proper address by registered cost. The union has categorically decied the charges revelled against him by filing his written statement. No concorrunity of hearing was given to the workman a poetned. Date, time and place of enquiry was not m: muted to him. Manner in which the enquiry proceeding was conducted was not in conformity with the principles of natural justice. So charges cannot be said to have been proved in absence of evidence being led by the management and the order of dismissal based on such enquity eport cannot be sustained.
- 20 Now the next main point for consideration before the (1987) is to see as to how far the punishment of dismissal awarded up the deliniquent workman by the management is just and proper and is proportionate to the alleged nature of misconduct.
- It lieurd both the parties on the aforesaid point in spectron, it was submitted by the side of the union that at best it can be said to be a simple case of unauthorized absence only for about four months and the absence from duty during the relevant period is duly explained and the reasons offsharines supported with medical certificate are sufficient enough. Treatment paper of Sh. Sahdeo Harisda issued by Mohulpahuri Christian Hospital prescription granted by 15; V. N. Singh in favour of the workman concerned, treatment paper issued by Afrah Hospital, Cirioth and pathological report of Sh. Sahdeo Majhi go to show that the delinquent workman was suffering from

- U.T.I. Causingpartial impotency and Mental weakness as well. I find much force in the argument of the union side and I am convinced to hold that the workman concerned was admittedly obsent from his duty during the relevant persod under the said compelling circomstances which was beyond his control.
- 22. It was further argued that the delinquent workman has got unblemish record during his service tenure and since there has not been any complain of any masconduct either by unauthorized absence or any other sort of misconduct. The management has also not chargesheeted him for habitual absenteers mor any chit of paper in this regard has been filed in the court nor there is any picarling in the written statement of the management in this regard. So it can very well be concluded that it is admittedly the first offence of unauthorized absence for which no prior pennission was taken or any information could be sent to the authority concerned. But the said reasons have been sufficiently explained and supported by the medical certificates indicating the compelling circumstances beyond the control of the delinqueer workman
- 23. It was also argued out by the side of the union that it is a simple case of an unauthorized absence for a few months under the competing circumstance which caused be said to be a gross misconduct. The amention of the court was drawn towards the provisions of Model Standing Order where the extreme possistency prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty cannot be imposed upon the workman in such a more case of alleged misconduct of an unauthorized absence for a few months. The points of argument has got much force and conveniencing as well.
- 24. It has been several times observed by the different Hon'ble High Courts and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disriplinary authority to consider the socie-economic background of the workman, his family background, length of service put in by the employee, his pass record and other surrounding circumstance including the nature of the misconduct and lastly the compelling circumstance to commit the misconduct. These are the relevant factors which mest have to be kept in mind by the authority at the ring of imposing the panishment which is not done by the management in this case.
- 25. Admittedly the workman concerned is an illiterate man of Majhr by caste who is the member of Scheduled Tribes and the member of the weaker section of the score by He is financially weak and poor who has suffered a lot for more than ten years. The amention of the court was drawn towards the provision of the Model Standing Order land down under clause 27(1) (pagel 5) where various minor punishment have been presented to be awarded according to the gravity of the misconduct. I fail to think as to why only maximum punishment available under the said clause should be awarded in the present facts and circumstage of

the case. It has been observed by the Apex court that justice must be tempered with mercy and that the delinquent workman should be given an opportunity to reform himself. and to be loyal and disciplinary employee of the management. Besides this it is also clear from the record and the argument of the union that second show cause notice was ever issued to the concerned workman before passing the order of punishment of dismissal which is of course direct violation of the mandate of the Hon'ble Apex Court this respect. However, I am of the considered view that the punishment of dismissal for an unauthorized absence for about four months under the compelling circumstance and without any melafide intention is not just and proper rather it is too barsh a punishment which is totally disproportionate to the alleged misconduct. Such a simple case should have been deals with leniently by the management. In this view of the mager I think it just and proper to modify and substitute the same exercising the power under Section 11 (A) of the Industrial Disputes Act, 1947 to meet the ends of justice and as such the impugned order of dismissal of the concerned workman is hereby set aside and he is directed to be reinstated with the continuity of the service and in the light of the prevailing facts. circumstance and the misconduct for which the punishment of dismissal was imposed on the workman concerned I think it appropriate that the delinquent employee he imposed a punishment of stoppage of two increments without any cumulative effect. It is further directed that the workman will be entitled to get only 50% of the back wages which will serve the ends of justice. Accordingly it is hereby.

ORDERED)

That let an "Award" be and the same is passed in favour of the workman concerned. Send the copies of the award to the Ministry of Labour, Govt. of India, New Delhi for information and needful. The reference is accordingly disposed of.

MD. SARFARAZ. KHAN. Presiding Officer नई दिल्लो, 11 जुलाई, 2007

का,आ. 2142.—औद्योगिक क्लिट अर्थिनियम, 1947 (1947 का 14) की भरा 17 के अनुसरण में, केन्द्रीय सरकार हूं. सी. एल. के प्रबंधतंत्र में संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, असनसोल के पेश्वेद्ध (संदर्भ संख्या 1/2004) की प्रकाशित करती है, जो केन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

> ृंसं एल-22012/135/2003-आईआर्(सीएम-II)) अवय कुमार गौड़, डंस्क अधिकारी

New Delhi, the 11th July, 2007.

5.0. 2142.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2004)

of the Central Government Industrial Tribunal-cum-Labout Court, Asansol, as shown in the Annexure in the Industrial Dispute between the management of Shyam Sunderpur Colliery of ECL and their workman, received by the Central Government on 11-07-2007.

JNo. L-22012/135/2003-IR (CM-II)]
AJAY KUMAR GAUR, Desk Officer
ANNEXIRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT

Sari Md. Sarfaraz Khan, Presiding Officer Reference No. 1 of 2004

PARTIES: The Agent Shyam Sunderpur Colliery of E.C.I. Burdwan.

Ms

The Jt. General Secretary, Ukhra Colliery Mazdoor Union, INTUC Cinema Road, Ukhra, Burdwan.

RETRESENTATIVEN

For the Management: Sr. P. K. Das. Advocate.

For the union (Workman): Sri M. Mukherjee, Advocate INDUSTRY: COAL STATE: WEST BENGAL.

Dated the 26-06-2007.

AWARD

In exercise of powers conferred by clause (d) of Subsection (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India, through the Ministry of Labour *vide* its letter No. 1, 22017/135/2003-IR (CM-II) dated 23:12-2003 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDILE

"Whether the action of the management of Shyanisundarpur Colliery under Bankola Area of M/s. Eastern Coal fields Ltd. In dismissing Sci D. P. Patra, Pit Clerk from service is legal and justified? If 1001, to what relief is workman entitled?"

Onhaving received the Order No. L-22012/135/2003-IR (CM II) dated 23-12-2003 from the Gavt. India, Ministry of Labour. New Delhi, for adjudication of the dispute, a reference case No. 1 of 2004 was registered on 05-01-2004 and accordingly an order to that effect was passed to issued notices to the respective parties through the registered post directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of said order notices by the registered post were sent to the parties concerned, Sri P. K. Das, Advocate and Sri M. Hukherjee, Advocate appeared in the Court along with a letter of authority to represent the Management and the Union respectively and union filed its written statement in support of its respective claims.

From the perusal of the record it transpires that the record was fixed for filing the written statement by the side of the Management. It is further clear from the record that petition has been filed on behalf of the workman concerned stating therein that the workman concerned has been suffering from various aliments and due to shortage of money he is not in a position to get himself breated properly as the P.F. Account, gratuities etc. has not been dishursed of by the management on the plea of pendency of the instant reference. It is further stated that the workman concerned is not willing to proceed further with this case so he wants to withdraw his case so that his terminal benefit may be dishursed by the management.

In view of the above facts and circumstance of the workman concerned is allowed to withdraw his case and the management is directed to disburse his P.F. account, grantuity and other dues if any at the earliest so that the workman concerned can meet all the necessary expenditure regarding hit treatment. And such it is hereby

ORDERED

that let a "No Dispute Awarded" be and the same is passed. Send the copies of the award to the Government of India Manistry of Labour, New Delbi for information and needful. The reference is accordingly disposed off in the light of the prayer of the workman concensed.

MD. SARFARAZ KHAN, Presiding Officer

भई दिल्ली, 17 **जुलाई**, 2**00**7

का,आ., 2143.—औद्योगिक क्विवाद अधिनियम, 1947 (1947 का 14) की कृति 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लि. के प्रवंधतीन के संबद्ध नियोजकों और उनके कर्मकारों के योच. अनुबंध में निर्विष्ट औद्योगिक खिद्याद में राष्ट्रीय औद्योगिक अधिकरण, अम न्यायालय !पृष्वई के पंचार (संदर्भ संख्या Camp. No. NTB-2 of 2004/ Arising out of Ref. No. 1/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-07-2007 को प्राप्त हुआ था।

> [सं. एल-20013/2/2007-आई.आर.(सी-I)] ल्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2143,—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. Comp. No. NTB-2/2004/Arising Ref. No. NTB-1/90) of the National Industrial Tribunal-com-Labour Court, Mumbai, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India.

Ltd, and their workman, received by the Central Government on 11-07-2007.

[No.L-2001372/2007-IR (C f)] SNEH LATA JAWAS, Desk Officer ANNEXURE

BRFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI PRESENT

Justice Ghanshyam Dass, Presiding Officer Complaint No. NTB-2 of 2004 (Arising out of Ref. No. NTB-1 of 1990)

PARTIES: Capt. Vikrant Sansare - Complainant

Vδ,

Air India Ltd. : Opp. Party

APPEARANCE

For the Complainant . Absent.

For the Opp. Party : Shri N. S. Lal, Advocate

STATE: Maharashtra

Mumbai, dated the 28th day of June, 2007.

AWARD

- Captain Vikrant Sansare, Senior Captain, Air India Ltd, General Secretary, Indian Pilots guild has moved the instant application under section 33(A) of the Industrial Disputes Act for the following reliefs.
 - (A) To quash and set aside the impugned order/ direction of the Opposite party dated 3-8-2004, threatening the complainant with dismissal.
 - (B) Pending the hearing and final disposal restrain the Opposite Party by an injunction from carrying out his threat of dismissing the Complainant or taking any other action against him.
 - (C) For Interim/Ad-Interint Relief's in the terms of prayer clause (b).
- 2. The marter remained pending for hearing for the last about 3 years. The order sheet goes to show that the complainant absented himself since the filling of the complainant. The notice was issued by the Office of the Tribunal and in pursuance there to, Mr. C. J. Joneson, Adv. appeared for the Complainant on 15-5-2007. The matter was adjourned on his request to 06-6-2007. None appeared for the complainant on 6 6 2007. The matter was posted for exparte hearing on 28-6-2007 i.e. today. None appeared for the Complainant today also. The Counsel for the Management Shri, N. S. Lal, Adv. for the Management is present.
- After going through the record. I find that the Complainant does not appear to be interested in prosecuting his complaint. In do not find any evidence worth the name to grant the relief prayed for by the Complaint.
 - 4. The complaint is accordingly dismissed. **IUSTICE GHANSHYAM DASS, Presiding Officer**

नई दिस्सी, 17 जुलाई, 2007

का आ. 2144.—श्रीक्रीगक विकाद अधिनतम, 1947 (1947 का 14) की धार 17 के अनुसरण में, केन्द्रीय सरकार सी.एम.पी.डी. आई आर.आई. के प्रवंधरीय के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुक्तेस्कर के पंचाद (संदर्ग संख्या 120/2001) को अकारित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

> [सं एल-22012/264/1993-आई.आर.(सो-□)] अनव कुमार गाँव, बेस्क सम्पिकारी

New Delhi, the 17th July, 2007

8.0. 2144.—In pursuance of Section 17 of the ladustrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 120/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bhobaneswar, as shown in the Amezure in the Industrial Disputs between the employers in relation to the management of CMPDIR1 and their workman, which was received by the Central Government on 17-7-2007.

[No.L-22012/264/1993-IR (C-II)]

AJAY KUMAR GAUR, Desk Officer

ANYXURE

CENTRAL GOVERNMENT INDUSTRIAL, TRIBUNAL-CUM-LABOUR COURT, BEFURANESWAR

PRESENT:

Shri N. K. R. Mohapatra, Presiding Officer, C.G.L.T. -cum- Labour Court, Bhubaneswar.

Tr. Industrial Dispute Case No. 129/2001

Date of Passing Award—26th June, 2007

EXTWEEN

The Management of the Regional Director, CMPDIRI, VII, 4th & 7th Floor, Graha Nirman Bhawan, Sachivalaya Marg, Bhubaneswar.

... 1st Party-Management

And

Their Workmen, represented through the Branch Secretary & C.C. Member, NCOEA, Co. CMPDIR IVII, Gruha Nirman Bhavan, Sactrivalaya Marg, Bhubaneawar.

....2nd Party-Union.

APPRARANCES

M/s. Somedarsan Mohanty, ;

For the 1st Party-Management.

M/s. R.K. Bose,

For the 2nd Party-

Advocate

Advocate.

Union

AWARD

The Government of India in the Ministry of Labour, in exercise of Powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/264/93-TR (C-II), dated 30-4-1997:—

"Whether the action of the Management of Central Mines Planning & Design Institute Limited (CMPDIL) in not regularizing the services of Shri Gokul Chadei, Ganesh Chandra Naik, Purna Chandra Ghadei and Madhab Naik, casual workmen is legal and justified? If not, to what relief are the workmen entitled and from which date?"

The abortly stated case of the Union as narrated in the Statement of Claim is as follows:—

The Management of C.M.P.D.I-RI-VII, (hereinafter called as Management) come into being at Bhubaneswar in August 1987 as a subsidiary company of the Coal India. Ltd. to act as an in house consultant to the department of Coal. Initially the said Management started functioning in a private rented building and thereafter it shifted in 1988 to 4th, 5th, 6th and 7th Floor of a building of Orissa State : Housing Board on lease basis. The total carpet area of these floors being about 20,000 Sq. (t. it engaged the disputants as Sweepers and after the sweeping work is over utilized their services in other minial works giving them an assurance that they would be regularized in due course of time. As they were paid considerably low wages much below the salary of a regular sweeper, these workmen made several representations in their individual capacity as also through the Union to question demanding regularization of their services. About four years after their engagement the Management having succumbed to the demand of the Union issued a letter on 31-3-1992 appointing. these workmen as casual sweepers for a period of 90 days. only with affect from 1-4-1992 on a consolidated wage of Rs. 75/- per day and thereafter having terminated them on expiry of the term again engaged them as before paying a pality amount. As the work performed by these workmen was perennial in nature and they were being continuously. engaged without regularization ever since the establishment of the Management, the Union raised an Industrial Dispute. The Government of India initially did not like to refer the matter to the Tribunal, but persuant to a direction of the How ble High Court in O.J.C. 761/94 it subsequently refrared. the matter. Hence this reference,

3. The Management on the other hand has averred that office sweeping work being of 2 to 3 hours job, one Ookul Ohndei (one of the disputant-workman) was engaged as a part time sweeper when the office-establishment of the Management first came into being in 1987. The said Gokul Ghadei for his own purpose engaged three others (meaning the other disputants) for timely cleaning of the

office floor. After the office was shifted to 4th to 7th Floor. of a building of State Housing Board (present building) in 1998 the self same Gokul was asked to sweep the floor on part time basis with his workers. While this practice was going on Cokyl Ghader and two of his associates namely Purna Chadei and Madhah Naik were appointed as casual. sweeper for 90 days with effect from 1-4-1992 on condition. that they would be terminated on completion of the said. term unless extended further. As in the meantime the Coal-India I imited, the apex body, imposed restriction on appointment of regular and temporary/casual employees. further extension to these workers could not be given after expiry of 90 days. However the work of sweeping was again. given on contrictual basis to a self styled farm M/s. Gokul-& Brothers rue by the disputants. When the management issued a short tender notice calling upon interested bidders. to take up the sweeping and upkeep work on contract basis, these disputants preferred O.J.C. 961/94 challenging the tender notice. The Hon'ble Court in their order dated 9-8-96 directed betther continuance of these disputants until the disposal of the reference and as such they are continuing till date. In the above back ground it is contended by the Management that the above engagement of the disputant being partially part-time, partially casual. and then contrictual and then High Court order oriented they are not exititled to claim regularization, their casual. appointment from 1-4-1992 onwards and prior to that not having been made in accordance with the recruitment

 On the basis of above pleadings of the parties the following three issues were framed.

DSMIPS

- 1. Whether the Industrial Dispute is maintainable?
- 2. Whether the workmen are entitled to any order of regularization?
- To what other relief, if any?
- 5. The Union has examined its Branch Secretary as its sole witness while the Management has examined two of its officers. Both parties have also filed a good number of documents in suppost of their respective stands.

ISSUE NO. 1

6. This issue is answered affirmatively there being no substantial challenge to the same by either party.

ISSUE NO. 2 & 3

7 These issues being inter-related are taken up jointly

The Union has produced as many as 37 documents marked as Ext-1 to 37. These includes correspondences, office orders, memorandum of settlements, short-tender notice issued by the Management, copy of payment

voucher, judgement of the Hon'ble High Court in O.J.C. 761/94 etc.

- 8. The Management has also produced equal number of documents marked as Ext.-A to Wand AA to HH and X and XII. These documents include correspondence with the higher authorities, representation of the disputants, copy of the office notes, appointment letters issued to three of the workmen for a period of 90 days, joining report of these disputants, Attendance register, vouchers granted by workman Gokul, quotation given by M/s. Gokul Chadei & Brothers etc.
- It may be stated at the very outset that except the oral evidence of W.W.I no document has been filed by the Union as to under what conditions these disputants were first engaged when the establishment of the Management came into being admittedly for the first time in 1987. From a letter of the Management (Ext.-1) addressed to its higher. authority it appears that disputant Gokul Ghadei was alone engaged first on part time basis as he was found working on self same basis in another neighbouring establishment of one S.E.C.L. and to manage his entire work the said Gokul in turn had engaged the other three disputants to sweep the office floors of the Management. Later when the of face of the Management was shifted to the present build. ing the Management diverted one such worker to attend their rest house situated in a different place asking Gokul-Chader alone to sweep the floors of the 4th to 7th Floor of the office building to which it was shifted. The said Gokulused to clean the floor along with two other persons namely. Punta Chandra Chadei and Madhab Naik (other two disputants) on a fixed sum settled on bangain. The said Gokulused to take his dues at the end of the month through youthers. The documents produced by the panies show that Shri Gokul used to receive his fees @ Rs. 15 per day per person when the minimum wage fixed by the State Govt. was something more than that suggesting that the workman Gokul was samply given a part time job of two to three hours for cleaning the floors alone. In his evidence the Branch Secretary of the Union (W.W.I) has claimed that ail. these four workmen of whom three were engaged in the of face building and another in the rest house, were working from 6 A.M. to 2 P.M. daily as they were engaged on other duties after the sweeping work was over. But to substantiate the same no documents worth the name has been produced our any of the disputants have been examined to throw sufficient light as to how they were kept engaged from 6 A.M. to 2 P.M. On the other hand the office notes marked as Ext.-8 shows that time and again the sweeping charges payable to Gokul was enhanced on his own representation and it were received by Gokul himself on behalf of his self styled finn M/s. Cokul & Brothers. This he used to receive until himself and disputant Puma and Madhab were given appointments as easkal sweepers for 90 days. from 3-4-1992 vide Ext.-F. G and H suggesting that their orevious engagement was on part time basis as claimed by the Management.

 It is contended by the Union Witness (W.W.-1). that as per Clause 11.5 of the National Coal Wage Agreement-IV (Ext.-27) no employer is permitted to engage contractors on Jobs of permanent and percumial in nature. Sweeping business being a work of above nature the past engagement of workman prior to their 90 days appointment as casual workers is to be taken into account while: considering their case for regularization. In this regard it may be pointed out that no doubt under the above agreement the Management is prevented from engaging contractors or labourers through contractors on job of permanent and percential nature. But such restrictions of not engaging contractors are only applicable to those type of work which needs to be attended continuously in a cyclic manner round the clock. The work of sweeping may be permanent but it cannot be said perennial unless it is shown that such sweeping activities are needed through out the entire working hours, in other words a distinction can be drawn between the duty of a Sweeper engaged in a mining area and the duty performed by a sweeper in an office building. In the former case sweeping business may be both percential and permanent but in the latter case the sweeping of office floor can only be considered as permunent but not both permanent and peremial.

 In the instance case there is evidence on record that besides having its office located in a reated multistoried. building the Management had taken another house on rent in another place to provide accommodation to those of the junior officers who did not intend to have separate houses. Except these two building it had no other residential quarters or other places requiring sweeping and cleaning in a permanent and perennial basis. From a letter of the Management (Ext.-1) which has been marked from the side of the Union it appears that of the four disputants one was asked to attend the building meant for Junior Officer's accommodation while the remaining three were sweeping the office building in question being engaged by workman Gokul. As normally sweeping work is to be completed before office hours, it squarely suggests that the disputants could not have been engaged for eight hours a day. Since the concerned workman have not come forward to depose before the Court and as their witness (W.W.-1) has failed to account for as to what other work besides sweeping was entrusted to these disputants to keep them engaged up till 2.00 P.M everyday, it can safely be concluded that these disputants were engaged on part-time basis as claimed by the Management prior to their appointment as casual sweepers with effect from 1.4,1992. This has gained support from the narration of Ext.-1 which indicates that while these disputants were working on part time basis in a nearby establishment they were contacted and engaged alike wise when the establishment of the Management came. first into being in 1987. The evidence of the Management witness read with the narration of Ext. 1 and other documents make it further clear that the part-time job of

sweeping was entrusted to the disputant, Gokul Ghadei alone but he used to take the assistance of other disputants to clean the office fluors when he was contacted first in 1987. The evidence of the Management Witness further indicates that these persons by devoting two to three hour daily use to sweep the office building in question before the office hour and for this Gokul Ghadei used to receive the entire dues in the name of Gokul & Brothers. Therefore in these premises the work done by these disputants cannot be considered as one of permonent as well as perennial in nature so as to attract the provisions of the National Coal Wage Agreement - IV.

It is on record (Ext.-2) that while the workmen. were working in the above manner, the Union raised a demand in its letter dated 10.1.1992 for regularization of these disputants, Over this issue the Dy. Chief Manager stationed at Ranchi called for reports from the Management and in a later stage three of the disputants namely Gokul Ghadei, Puma Chandra Ghadei and Madhab Naik were given temporary appointment for 90 days with effect. from 1.4.1992 on condition that their engagement was terminable on expiry of such period unless extended further. The documentary evidence produced by both parties shows that after termination of these disputant on expiry of the above term, the Union came up heavily demanding their regularization, which resulted in various meetings between the Management and the Union but to no effect. In the regantime the Management also asked for leave of higher authority to give them further engagement and at the same time invited applications through Employment Exchange for filling up two posts that were sanctioned later. But in view of the recruitment restrictions imposed by the Coal India Ltd. these posts could not be filled up. The record indicates that after the above termination in July 1992 workman Gokul having agreed to work as before gave a proposal on behalf of M/s. Goltul &. Brothers to work on an agreed rate of Rs. 80 per day each (three persons) vide Ext.-9 dated 1-8-1992 and took up the work. While this being the position the Management on 8-5-1996 issued a short tender notice calling interested hidders to take up general up-keep work on contract basis. In the meanwhile the Central Government did not like to refer to the Tribunal the dispute which the Union had raised before the Labour Enforcing Authority. This order having been challenged in O.J.C. 761/94 the Hon ble Court in their order dated 9.8.96 directed the Central Government to refer the matter to Tribunal. At the same time it directed the Management not to take any step to disengage all the four disputants until the reference is answered.

13. From the above it is thus clear that while the three workmen Gokul. Puma and Madhab were working as sweepers of the office building on part time basis they were appointed as casual aweepers for 90 days on stipulation that their engagement would be terminable on expiry of 90 days unless it is extended. It is here argued by the

Union that under the Standing Order casual engagement for 90 or more than 90 days entails a person to claim regularization. On the other hand it was argued by the Management that these persons having not been recruited/selected as per the recruitment process of the company and their 90 days engagement, being as casual worker, they have got no right to claim regularization as per the mandate of the Apex Court given in several rulings. It was further contended that it is outside the purview of the Court/Tribunal to pass an order for regularization of any particular workers.

It is no doubt true that a casual employee or daily. wagers not belected as per the recruitment rule has got no right to claub regularization. It is equally true that the hands of the Tribunal are tight to pass any order directing regularization of any such workers. But if the Standing Order of an industry (contains a provision for regularization of such workers, in my opinion, the same would prevail all over. The Standing Order of the Management a portion of which has been murked as Ext.-26 shows the classification of different workers. According to it a casual workman means a workman who has been engaged for work which is: intermittention sporadic or of casual nature not extending beyond a maximum period of three months at a time he evidence of the Management Witness shows that the above named three disputants were appointed as casual worker for alperiod of 90 days with effect from 1.4.1992 and they were terminated on 30th July, 1992. This shows that they were not terminated after 90 days but were allowed so continue beyond 90 days. The full text of the Standing Order has of course not been filled by either party so as to enable the Count to examine the real status of casual worker. But the letter of the Central Mine Planning & Design. Institute Lighted (Ext.-W) indicates that persons engaged as casual workers for more than 90 days acquire a right to claim regularization. It is on record that even while the three working were working as causal employees the Management had moved its higher authority for further extension of the term of these three workmen beyond 90. days. It is also on record that after sanction of some permanent posts of sweeper an advertisement was made asking. the Local Employment Authority to sponsor the name of suitable candidates and at the same time these three disputants were asked to get their names sponsored through employment exchange. The said recruitment examination. could not of course be held due to recruitment ban imposed by the Coal India Amhority. But none the less the other correspondence of the Management shows that it was equally interested to provide regular services to these three workspen. The most vital and disquieting aspect of the case as appearing from the evidence is that though these three workmen were given appointment as - casual. employees for a period of 90 days with effect from 1.4.1992. they have been terminated in the month of July 1992 i.e. much after 90 days without further extension. This itself makes the workmen (three in number) emitted to claim regularization as per the Standing Order of the Management.

- 15. It was argued by the Management that the 90. days contractual engagement of the above disputants hotbeing in accordance with the recruitment procedure they were not entitled for regularization. Be it noted here that when the Management has allowed these workers to continue as casual employees, for whatever reasons it may be, beyond the contractual period of 90 days, they cannot be denied regularization in violation of the Standing Order. The Tribunal no doubt is capsized with its power to direct. regularization but a direction to the Management to regularize the disputants namely Gokul, Puma and Madhab. would not be bad in the face of a statutory protective clause. given under the Standing Order. But in so far as the case of the 4th disputant Shri Ganesh Ch. Naik is concerned except a thin line of evidence of the Union that he was also working continuously like other three, there is not a scrapof paper to show that like the other three he was also given. a contractual appointment as casual workers for a period of 90 days and above. Therefore in these circumstances he declared not entitle for any relief.
- 16. Thus to sum up, the Management is directed to regularize the services of the workman Gokul, Puma and Madhab in accordance with its Standing Order within six months from the date of receipt of the order and subject to the reservation norms. They would ofcourse not be entitled for any back wages and other benefits except continuity of service from 1-4-1992.
 - 17. Accordingly the reference is answered.

N. K. R. MOHAPATRA, Presiding Officer

List of witnesses examined on behalf of the workmen

Workman Witness No. 1- Shri Bijaya Bihari Padhi.

List of witnesses examined on behalf of the Management

Management Witness No.1 - Mohammed Yusuf Anwar, Management Witness No.2 - Birendra Prasad Singh

List of exhibits on behalf of the 2nd party-workman

Ext.-1 - Copy of letter dated 21-1-92.

Ext.-2 - Copy of letter dated 27/28-1-92.

Ext.-3 - Copy of letter dated 14-2-92.

Ext.-4 - Copy of letter dated 1-7-92.

Ext.-5 - Copy of note dated 21-7-92.

Ext.-6 - Copy of letter duted 19-8-92.

Ext.-7 - Copy of lener dated 26-8-92.

- Ext.-8 Copy of letter dated 20-11-92 (Two Shoets)
- Ext.-9 Copy of letter dated 29-8-92.
- Ext-10 Copy of bill dated 12-11-98.
- Ext.-11 Copy of bill dated 9-12-98-
- Ext-12-Letter dated 21-9-92.
- Fixt.-13. Copy of Transfer Certificate dated 25-10-88.
- Ext.-14 Copy of Caste Certificate issued in Misc. Case No. 406/82.
- Ext.-15 Copy of Transfer Certificate dated 18-4-91.
- Ext.-16 Copy of Caste Certificate issued in Misc. Case No. 1507/01
- Ext. -17 Copy of Transfer Certificate dated 11-11-88.
- Ext-18 Copy of Caste Certificate in Misc. Case No. 1186/ 88.
- Faxt.-19 Copy of the letter No. 7467 dated 19/24-2-93 regarding regularization of Shri G.C. Nayak and Others.
- Eat. -20 Copy of the letter dated 14-8-92 regarding sanction for engagement of casual sweepers.
- Ext.-21- Copy of the certified letter dated 27-8-92 regarding engagement of sweepers.
- Ext.-22 Copy of the charter of demands dated 17.8.92.
- Ext.-23 Copy of the letter dated 16.12.92 of the Association for discussion on the Issues.
- Ext.-24 Copy of the minutes of the meeting held on 9-2-93.
- Ext.-25 Copy of the minutes of the meeting held on 30-7-93.
- Ext. 26 Copy of the Standing Order (6 sheets).
- Ext.-27 Copy of the memorandum of agreement dated 27-7-89 (5 pages).
- Ext. 28 Copy of the letter dated 10-12-92 sent to the Asst. Labour Commissioner.
- Ext. 29 Copy of notice dated 22-12-92 asking for furnishing comments in the dispute.
- Ext.-30 Copy of comments furnished in the dispute.
- Ext.31 Copy of minutes of discussion held on 11-2-93.
- Ext: -32 Copy of Memorandum of Settlement dated 24-6-91.
- Ext. -33 Copy of Short Tender Notice dated 8-5-96.
- Ext. -34. Copies of Vouchers (4 sheets).
- Ext.-35 Copy of the order dated 30-3-93 passed by the industrial Court, Nagpur.

- Ent.-36 Copy of the notification dated 9-12-76.
- Ext.-37 Copy of the order dated 9,8.96 in O.J.C. No. 761/94 (11 sheets).

List of Exhibits on Behalf of the 1st Party Management:

- Ext.- A- Copy of letter dated 10-1-90.
- Fxt,-B Copy of note dated 10-1-90.
- Ext.-C Copy of note dated 11-1-91.
- Ext.-D Copy of note dated 21-3-92.
- Ext.-E Copy of letter dated 30-3-92.
- Fxt.-F Copy of letter dated 31-3-92.
- Fixt.-G Copy of letter dated 31-3-92.
- Ext.-H Copy of letter dated 31-3-92.
- Fxt.-I Joining report dated 1-4-92.
- Ext.-M Caste Certificate dated 29-12-92.
- Fxt-1/2 Identity Card dated 26-4-91.
- Ext.-K Joining Report dated 1-4-92.
- Ext K/I Caste Certificate dated 12-9-91.
- Ext-K/2 Identity Card.
- Ext.-1. Joining Report.
- Fxt-L/L Caste Certificate dated 29-12-88
- Ext.-M Copy of extract of attendance register.
- Ext.-N Copy of note dated 1-7-92.
- Ext.-O Copy of letter dated July 1992.
- Ext.-P Copy of letter dated 31-7-92.
- Ext.-Q Copy of letter dated 1-8-92.
- Ext.-R Copy of letter dated 5-8-92.
- Ext.-S Copy of letter dated 28-8-92.
- Ext.- T Copy of quotation dated 29-8-92.
- Ext.-U Copy of note sheet dated 2-9-92.
- Ext.-V Copy of letter dated 7-9-92.
- Ext.-W Copy of letter dated 16-9-92.
- Ext.-AA Copy of note sheet dated 24-9-92.
- Ext.-BB Copy of letter dated 29-10-92.
- Ext-CC Copy of note sheet dated 23-11-92.
- Ext. DD · Copy of letter dated 24-11-92.
- Ext.-FB Copy of letter dated 14-12-92.
- Ext.-FF Copy of bill dated 1-3-93.
- Ext.-OG Copy of letter dated 31-3-93.
- Eat.-HH Copy of bill dated 2-3-94.
- "X"- Copy of Letter No. 793, dated 5-12-2002, 16/18-7-98. of CMPDI (Sr. PO)
- "X/T" Copy of reply dated 25-7-98 of Gogu I Ghadei to Sr. PO, CMPDI.

नई दिल्ली, 17 जुलाई, 2007

क्य.आ. 2145.—औद्यंतिक विवाद अधिनियम, 1947 (1947 का 14) की धार: 17 के अनुसरण में, केन्द्रीय सरकार तारापुर एटीभिक पंतर स्टेशन के प्रबंधतंत्र के संबद्ध नियोक्कों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-2, मुख्बई के पंचाट (संदर्भ संख्या CGIT-2/37 of 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[अं. एल ४२०१२/२४/४२) आई आर (सीएम-३१)] अनय कुमर गौड़, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2145.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT 2/37 of 2004) of the Central Government Industrial Tribunal-com Labour Court. No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the managemental Tarapur Atomomic Power Station, and their workingen, received by the Central Government on 17-7-2007.

[No. L-42012/292/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT D'DUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT: A.A. Lad, Presiding Officer

Reference No. CGIT-2/37 of 2004

F τ pluyers in relation to the Management of Tarapus Atomic Power Station

The General Manager (P & IR) The apur Atomic, Fower Station PC Tripp Distr. Thank Thane-404534.

ΛND

Pager Wydamen Shri Rujendra R. More At. Poptarar PO Dharai Taluka Paigear Disu, Thand

APPEARANCES

Ecotic Employer

M/s. Rajesh Kothari & Co. Advocates For the Workman

Mr. V. J. Amberkar Advocate

Mumbai, dated 15th June, 2007.

AWARD

The Government of India, Ministry of Labour, by its order No. 1. 42012/292/2003/IR (CM-11)/taled 18-8-2004 in exercise of the powers conferred by clause (d) of subsection (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Tarapur Atomic Power Station, District Thane in dismissing the services of Mr. Rajendra R. More, Helper with effect from 8-6-1996 is legal and justified? If not, to what relief the workman is entitled?"

- 2. Claim Statement is filed at Ex-8 by workman stating that he was employed by first party as a Helper since 1991 as per the letter issued. Said employment was with first party upto 4-4-91. Thereafter he was regularised in the employment as per demand of the Union as a daily rated employee from 5-4-1991 till 8-6-95.
- 3. On 14-8-95 he was given pay scale of Rs. 750-42 870-14-940. Thereafter he was terminated on 8-3-96 giving effect from 8-6-96 without any notice and any reason. By letter dated 20-4-2003 he questioned the said action and requested to regularise him in the employment.
- 4. He states that, he was arrested by Police on Talse complaint given by one lady. Actually he was not concerned with that lady who leveled false charge of misconduct against him. Only because second party arrested and charge sheeted by police and without holding enquiry and without giving opportunity to explain upon the said, he was terminated though he was acquitted from the said complaint by the Session Judge. Palghar. So he prayed that, action taken by first party dated 8-3-96 be quashed and set aside with direction to first party to reinstate him in the employment with continuity of service.
- 5 This is objected by first party by filing repty at Ex. 11 stating that, he was appointed on probation on 8-3-96 and during the probation period he was terminated. He kept silent for about six years and prayed for reinstalement though he got acquirted from the Session Court regarding criminal case pending, initially he was taken as a casual worker and worked from 1983 to 1994 for number of days as mentioned in para 3 of Written Statement. Then he was selected and appointed on probation. During the probation his work found unsatisfactory so he was terminated. Moreover termination dated 8-6-96 was challenged by him in 2002 by application with ALC (C). No explanation was given as to why he was late in approaching Conciliation Officer. So on all these counts, claim made by second party deserve to be reject.

6. In view of above pleadings issues were framed at Ex-16 which are answered as follows:

ISSUES

FINDINGS

Is termination justifiable?

No.

2. Is be entitled for reinstatement? Yes, but

Yes, but without backwages.

3. What Order?

As per order below.

REASONS

Issue no. 1 :---

- 7. Termination dated 8-6-96 is challenged by second party alleging that, without following due process of law and without hearing him by giving charge sheet and by bolding enquiry, he was terminated said decision of the first party is illegal. Whereas case of the first party is that, since he was appointed on probation and his work found unsatisfactory he was terminated in probation period for which enquiry does not require or any explanation from the work man.
- First party place reliance on the citation published. in 2003 (III) SCC page 263 where it is observed that, if employee terminated during probation period, on unsatisfactory performance, does not attract any stigma. Here this case is on the point of stigms on the employment. of the concerned workman but here second party who is involved in the reference was terminated. As per Industrial Disputes Act it is not justifiable and it is not even observed in that angle in the said observations. Same view is taken in the citation published in SOC (1) 520 where it is not clear. whether probationer can be terminated in Industrial Disputes Act without giving opportunity to hear the employee on the charges. Citation published in 2000 (v) SCC 152 observed that probationer has no right to be scinstated on the same post again. In the said case provision of Industrial Disputes Act are not discussed and observed does not require any enquiry while terminating employee who is on probation. Against that citation produced by second party published in 1970 H LLI page 454 SC reveals. that, resmination of the employee who is in probation if done without show cause and holding enquiry it is observed that, it is not just and legal. It is further observed that, if such a termination is challenged before Tribonal by employee who was on probation without holding enquiry and without hearing him in that case, Tribunal can consider the validity of order of termination and can see whether any reason is assigned in terminating the employment. So ratio led by Apex Court while deciding case of Brokebond. V/s l.K.Gautam supra observed that, when employee is on probation does not give blanket right to the employer to

terminate the employee during probation without holding an enquiry.

Admittedly there was no chargesheet and no enquiry. Admittedly no explanation was sought from second party for what he was terminated and what was in the mind of first party in terminating the second party. It appear that on the basis of arrest in Session Case pending against him in 'Palghar Court' he was terminated. The case of the second party is that he was acquitted by Palghar Session Court and that fact is not disputed by first party. So this reveals that, on the so called complaint first party act upon and decided to terminate his employment which is not just and proper. What ever may be in the mind of first party about second party, it must convey it to him and sought explanation and thereafter can take action. But here no opportunity of that type appears given and simply first party safely rely on the prosecution of the second party and decided to terminate during his probation observing his work was not satisfactory. Moreover nothing is stated about his work. No specific event is mentioned by which it can be observed that work of second party was not satisfactory. No any case is projected except so called criminal case and reason behind his terroination. So all these reveals that, first party took, law in its hand and decided to terminate his employment which is not just and legal. It is noted that, this employee is protected by provision of Industrial Disputes Act. His services are governed by the provision of Industrial Disputes Act. In this scenario the action taken by first party if considered, one will have to conclude that, it was not legal and just. So, I observe that, termination is not justifilable as well as legal one..

Issue nos. 2 & 3:-

- 10. Second party claim reinstatement with continuity of service. First party challenge it saying that, he approached after 6 years from termination which is not just and legal.
- 11. The case made out by second party that, his criminal case was decided on merit on 8-4-2002 whereas he was terminated on 8-6-96. Besides reason of termination is a prosecution going on against second party in Palghar Sessions Court. So definitely when second party got a clean thit about his so called charges, it might inspire him to approach for employment in which in my considered view it is not unjust or against the common sense of the common man. When he go clean chit from the Court on 8-4-2002 which is not disputed and challenged by first party, definitely be might have considered about his employment and accordingly he approached Tribunal. So in my considered view delay caused is explained by second party saying that he was acquitted on 8-4-2002. So his approach in 2002 against the termination of 1996 is justified.
- It is matter of record that, he did not work with first party from 8-6-96. First party is a Research Institution.

'which is dealing with nuclear power. It is a public body run in the interest of public. When second party did not work for first party from 1996 in my considered view, he is not entitled for backwages.

13. As observed above, decision taken by first party of termination without enquiry and without issuing charge sheet is not just and legal. Moreover the so called charges levelled against him were discharged by the competent court. So all that permits second party to claim employment with first party but with no other ancillary benefits. Accordingly I answer above issues and passes the following order:

ORDER

- I. Reference is partly allowed.
- 2 First party directed to reinstate second party Shri Rajendra, R. More as Helper within three months from the order of this Tribunal and go on paying birn his wages on the basis of his last pay drawn when terminated.
- 3. Prayer of second party to give continuity in service and other ancittary benefits like backwages are rejected.

Date: 15:06-2007.

A. A. I.AD, Presiding Officer

नई दिल्लो, 1**7 जुलाई, 200**7

का.आ. 2146.— औद्योगिक विकर अधिनियम, 1947 (1947) का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार है. सी. एल. के प्रवंधतंत्र के संबद्ध नियोवकों और उनके कर्मकारों के बीब, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आस्त्रसोल के पंचाट (संदर्भ संख्या 58/2005) की प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2007 को प्राप्त हुआ था।

[सं. एल 22012/355/2(XM - आई आर (सोएस-11)] अलब क्यार गौड, डेस्क अधिकारी

New Delhi, the 17th July, 2007.

S.O. 2146.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/2005) of the Central Government Industrial Tribunal-com-Labour Court, Asansof as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited, and their workmen, received by the Central Government on 17-7-2007.

(No. L. 22012/355/2004-IR (CM-II)] AJAY KUMAR GAUR, Dosk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-IL ASANSOL

PRESENT

Sri Md. Sarfaraz Khan, Presiding Officer

Reference No. 58 of 2005

Parties: The Agent, J.K. Nagar Colhery of E.C.L. Bidhanbag, Burdwan

 $V_{\rm PT}$

The General Secretary, Knyala Mazdoor Congress, Asansol, Bardwan

REPRESENTATIVES

For the management

. Sri P.D. Das, Advocates

For the union (Workman) : Sri S.K. Pandey, General

Sri S.K. Pandey, General
Secretary, Koyala Mazdoor

Congress, Asansol.

Industry: Coal State: West Bengal

Dated the 24-11-2006

AWARD

In exercise of powers conferred by clause (d) of Subsection (1) and Sub-section 2(A) of Section10 of the Industrial Disputes Act, 1947 (14 of 1947) Government of India through the Ministry of Labour vide its letter No. L-12012/355/2004-IR (CM-II)| dated 21-7-2005 has been pleased to refer the following dispute for adjudication by this Tributal.

SCHEDULE.

"Whether the artion of the management of J.K. Nagar Cultiery under Satgram Area of M/s. ECL in dismissing Sri Babui Majhi, Electric Helper from service w.e.f. 29-12-1992 is legal and justified? If not to what relief the workness is entitled and from which date?"

After having received the Order No. 22012/355/2004-IR(CM-II) dated 21-07-2005 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication a reference case No. 58 of 2005 was registered on 17-08-05 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were issued to the parties concerned. Sri P.K.Das, Advocate and Sri S.K.Pandey, General Secretary of the union appeared in the Court along with a letter of authority to represent the management and the union was filed but in spite of several adjournments and direction no written statement was filed on behalf of the management and ultimately the case was fixed for final hearing.

- In brief compass the case of the union as set. forth in its written statement is that Sh. Habui Majhi, was a permanent employee of the company as Flectric Helper at J.K.Nugar Colliery under Satgram Area of M/s. Eastern Coalfields Limited. The main case of the union is that the delinquent employee absented from his duty w.c.f. 23-6-1992 to 14-8-1992 due to his sickness for which be was charge sheeted vide charge sheet No. ECL/IKN/PER/ 92/4285 dated 14/17-8-92. After being declared fit the workman concerned reported to the management for resumption of his duty but he was not allowed. It is also the case of the union that the workman concerned replied to the charge sheet and appeared before the enquiry of ficer and submitted his sick certificate etc. for the perusal of the enquiry officer but surprisingly exough the workman was dismissed from the service of the company on 29-12-1992. by the General Manager, Satgram Area. The workman along with his union tried their level best to pursue the management for his reinstatement but to no effect and his assue was kept pending for years together without any decision.
- 3. It is also the claim of the union that the delinquent employee is sitting idle without any job from the date of dismissal and his whole family is on the verge of starvarion. The dismissal of the workman concerned from the service of the company is claimed to be illegal and unjustified. The union has sought a relief for the reinstatement of the workman concerned on the service after setting aside the order of the dismissal passed by the management together with the payment of the full back wages and al: the consequential benefit.
- 4. From the perusal of the order sheets of the record it transpires that right from the date 14-10-05 to 15-9-06 several adjournments and direction by way of last chance for filling the written statement were given to the management but to no effect and ultimately the case was fixed for

final hearing. It is further clear from the record that some Xerox copies of the documents have been filed by the side of the union in support of its claim. The copy of the charge sheet, enquiry proceedings, enquiry report, reedical certificate, dismissal order and copies of representation dated 18-8-1993 and 18-6-98 arkiressed to the G.M., Satgram Area have been filed in the court.

- Keeping in view of the pleadings of the union and the material available in the record I find certain facts which are admitted one.
- 6. It is the admitted fact that the workman concerned Sh. Babui Majhi was in the employment of the company as Electric Helper at J.K. Nagar Colliery under Satgram Area of M/s. Eastern Coalfields Limited. It is also admitted that the delinquent employee was absent from his duty w.c.f. 23-6-92 to 17-8-92 without any leave or prior permission and without any information to the management and accordingly be was charge sheeted for his unauthorized absence from duty.
- 7. It is also directly or indirectly admitted case that the workman concerned never reported before the colliery management during the entire period of absence nor any written intimation stating the reason of his absence was submitted by the delinquent employee to the management.
- 8. It is obvious from the record, enquiry proceeding, and its finding that Sri Bhailal Hela and Bansrupon Chowdhury the management representative were examined before the linquiry Officer who has categorically supported the fact that the delinquent employee was absent during the relevant period without information/authorized leave which is admitted by Babui Majhi, the workman concerned in his statement before the enquiry officer.
- 9. Having gone through the entire facts, circumstance, enquiry proceeding and its findings I am satisfied to hold that the workman concerned was admittedly absent from his duty during the relevant period continuously without any sanctioned leave, prior permission or information to the management. The Enquiry Officer has rightly beld him guilty for the alleged charge of unauthorized absence w.c.f. 23-6-92 to 17-8-92 and in view of the prevailing facts the definquent employee deserves some suitable punishment for the alleged proven misconduct as per the prevision of the Model Standing Order applicable to the establishment.
- 10. Now the only main point in issue for consideration before the court is to sec as to how far the punishment of dismissal awarded to the workman concerned by

the displinary authority is just, proper and proportionate to the alleged proven nature of misconduct.

It. Heard both the parties on the points in issue. It was submitted by the union that it is a simple case of an unauthorized absence for about two months only and the absence from the duty during the relevant period is duly explained and the reasons of absence supported with nearment papers and medical certificate is relevant and satisfactory. The enquiry officer has also not whispered even a word that the reason of anauthorized absence was without any satisfactory reasons.

12. It was further submitted that the workman concerned has got unblemish record during the service tenure and there has not been any complain of any misconduct against the workman concerned. The management has also not been able to prove the charges of habitual absentectism and no chit of paper in this regard has been filed in the court. So it can be easily concluded that it is the first offence of the workman which has been sufficiently explained and supported by the medical certificate indicating the compelling circumstance beyond the control of the workman.

13. In course of argument it was also submined that a simple case of unauthorized absence for about two months can not be said to be a gross misconduct and in this context the attention of the court was drawn towards the provision of the Model Standing Order where the extreme purposiment prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty can not be imposed upon the workman in such a minor case of alleged proven misconduct of as granthorized absence. The submission of the union has got much force and reasonably convincing.

14. It has been several times clearly observed by different Hon'ble High Courts and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disciplinary authority to consider socioeconomic back ground of the workman, his family back ground, length of service put in by the employee, his pass seconds and other sunfounding circumstances including the nature of misconduct and lastly the compelling circumstance to commit the misconduct. These are the relevant factors which must have to be kept in mind by the authority as the rime of imposing the punishment which of course has not been done by the authority in this case.

15. No doubt the workman concerned is an illiterate man of the weaker section of the society who is admittedly financially weak and poor who has suffered a lot for more than ten years for a minor misconduct of anauthorized

absence for about two months under the compelling circumstance beyond his control. It is clear that there is no charge of habitual absenteeism proved against him and it is the first offence. Besides this the workman has got unblemish record as no evidence or document has been produced by the management in this regard. The attention of the court was drawn by the union towards the provision of the Model Standing Order laid down under clause 27(1) (page 15) where various minor punishment have been prescribed to be awarded according to the gravity of the misconduct. I fail to think as to why only maximum punishment available under the said clause should be awarded in the present facts and circumstance of the case. It has been observed by the Apex Court that justice must be tempered with mercy and that the delinquent employee should be given an opportunity to reform himself and to be loyal and disciplinary employee of the management

16. However Tany of the view that the punishment of dismussal for an enauthorized absence for about two months under the compelling circumstance and without any malafide intention is not just and proper rather it is too. barsh a punishment which is totally disproportionate to the alleged proven misconduct, shocking to the judiciaconscience of the court. Besides this as per the directions of the Apex Court no second show cause notice before imposing the punishment of dismissal has been assued to the workman concerned which is the direct violation of the directives of the Apex Court and the principles of natural. justice as well. Such a simple cose should have been dealt. with leniently by the management. In this view of the matter I think it just and proper to modify and substitute the same by exercising the power under Section $\Pi^{*}(\mathbf{A})$ of the L.D. Act, 1947 in order to meet the ends of justice and as such the impugned order of dismissal of the concerned workman is hereby set aside and he is directed to be reinstated with the continuity of the service. In the light of the facts, discumstance and the proven misconduct under which the punishment of discussal was awarded to the workman concerned I think at appropriate that the delinquent workman be imposed a punishment of stoppage of two increments without any cumulative effect. It is further directed that the workman concerned will be entitled to get only 50% of the back wages which will serve the ends of justice. Accordingly it is hereby.

ORDERFD

that for an" Award" be and the same is passed in favour of the workman concerned. Send the copies of the award to the Gov! of India, Ministry of Labour, New Deth: for information and needful. The reference is accordingly disposed of.

MO. SARIARAZ KHAN, Presiding Officer

नई दिल्ली, 17 जुलाई, 2007

का.आ. २१४७.—औरब्रेंगिक विकार अधिनियम, १९४७ (१९४७) का 14) की धारा 17 के अनुसरन में, केन्द्रीय सरकार **परतीय खादा** निरुप के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीध, अनुर्वंच में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं.-1, चण्डीगढ़ के पंचाट (संदर्भ संख्या 147/2000) की प्रकाशित भगरती हैं, जो फोन्द्रीय सरकार की 17-7-2007 को प्राप्त 医细门组织

> [सं. एल-22012/404/1999) आई आर (सी-II)] अजव कुमार गौड़, डेस्क अधिकारी

New Delhi, the 17th July, 2007

S.O. 2147.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 147/ 2000) of the Central Government Industrial Tribugal cum-Labour Court, No. 1, Chandigark as shown in the Amexure in the Industrial. Dispute between the employers in relation. to the the management of F.C.I and their workmen, which way received by the Central Government on 17-7-2007.

> JNo. 1-22012/404/1999-IR (C-II)] AJAY KUMAR GAUR, Desk Officer ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-L, CHANDICARH

CASE NO. L.D. 147/2000

Shri Bhadur Singh S/o Sh. Tara Singh Village and P.O. Kathunangal Amritsar (Pb.) ...Applicant

The Distt. Manager, Food Corporation of India, 86, Rani Ka Bagh, Amritsar (Pb.) ... Respondent

APPEARANCES

For the Workings,

For the Management

Shri N.K. Zakhmi

AWARD

Passed on 4-7-07

Central Govt. vide notification No. L-22012/404/99/ IR (CM-II) duted 7-3-2000 has referred the following dispute: so this Tribunal for adjudication.

> "Whether the action of the management of Food Corperation of India. Amritsar in terminating of services of Shri Bahadur Singh S/o Sh. Tara Singh w.e.f. 1-1-1997 without paying him any retrechment. compensation is legal and justified? If not, to what relied, the concerned workman is entitled and from

Case repeatedly called None has put up appearance. on behalf of the workman Shri N. K. Zakhmi advocate for the management submitted that workman petitioner has not appeared on this case despite registered notice for today. He submitted that earlier also in the whole year in 2004 and thereafter on \$7-4-06 to 24-5-06, 22-8-06, \$-11-06 at 20-12-06, 28-2-07, 24-5-07 and today 4-07-07 none appeared for the workman. It appears the workman is not interested to pursue his case. He is not responding to the registered notices of the court even. It appeares that

workman is gainfully employed some where and not interested to pursue this reference.

In view of the above, since the workman is not. appearing despite registered notice, no purpose will be served in keeping this case pending. Therefore, the present reference is returned for want of prosecution to the Central Govt. File be consigned to record.

Chandigarh

Dated: 4-7-07

RAJESH KUMAR, Presiding Officer नई दिल्ली, 17 जुलाई, 2007

का,आ, 2148,---औद्योगिक विवाद अधिनियम, 1947 (1947 का (4) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय रेलवे कुलां डीक्ल लोकोसड प्रवर्षतंत्र के संबुद्ध नियोजकों और उनके। कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 11 मुम्बई के पंचाट (संदर्भ संक्वा: 80/2003) को प्रकारित करती है, जो कॉन्डीय सरकार को 17-7-2007. को फ्राप्त हुआ। वा।

> [सं. एल-41011/43/2002-आई आर (ची-1)] अवय कुपार, हेस्क अधिकारी

New Delbi, the 17th July, 2007

S.O. 2148.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/ 2003) of the Central Government Industrial Tribunal-cum-Labour Court-II- Mumbei as shown in the Annexure in the Industrial Dispute between the management of Central Railway, Kurla Diesel Locoshed, and their workmen, received by the Central Government on 17-7-2007.

> [No. L-41011/43/2002-IR (B-3)] AJAY KUMAR, Desk Officer

ANNEXURE.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT:

A. A. Lad, Presiding Officer Reference No. CG1T-2/80 of 2003

EMPLOYERS IN RELATION TO THE MANAGEMENT OF CENTRAL RAILWAY, KURLA DIESELLOCOSHED

- The Divisional Mechanical Engineer (D) Central Railway Kural Loco Shed, Kurla Marobai-400 024
- The Divisional Railway Manager Central Railway Mumbai Division, Mumbai CST Mumbai-400 001.
- The General Manager Central Railway Mumbai Division, Mumbai CST Mumbai-400 (0) i.

AND

Their Workmen

The General Societary Indian Railway Technical Staff Association (C.R.) 2, Mahabir Yaday Chawl Nagar Das Road, Andheri (E) Murobai-400 058.

APPEARANCES

For the Employer

Mr. Mandoep Sahni,

Representative

For the Workman.

: Mr. A. B. Mishra Representative

Mumbai, dated 12th June, 2007.

AWARD

The Government of India, Ministry of Labour, by its order No. L-41011/43/2002-IR (B-I) dated 25-13-2003 in exercise of die powers conferred by caluse (d) of subsection (1) and sub-section 2(A) of Section 10 of the Industrial Depute Act, 1947 have referred the following dispute to this Tribunal for adjudication:

"Whether the action of the General Manager, Central Railway, Mumbai CST and other officials in imposing the punishment of reduction of pay from Rs. 10,500 per month to Rs. 6,500 per month for a period of S years with future effect is legal, proper and justified? If not to what relief (including the refund of arrears of payl and recovered Penal Rent and other consequential benefits, etc. alongwith the promotion to the higher post at par with his juniors) Shri A. N. Pandry, Section Engineer (T & C) Diesel Loco Shed, Kurta is entitled for and from which date and what other directions are necessary in the matter?"

2 To support the subject matter referred in the reference, second party place reliance on claim statement. filed at Ex. 13 stating, that, he worked, with frist party as a Section Engineer Battery Section at Diesel Loco Shed at Kurla. He worked for 18 years continuously. During that period aumber of charge sheet were served on him as mentioned in para 2.5 of his claim, statement. On number of occasions charges levelled against him were extracrated in the inquiry. The present reference is pertaining to last charge sheet dated 15-9-98 where he was not found guilty. before Inquiry Officer still management punished him on allegation of subletting Railway Quarters. According to bun thorges levelled against him in charge sheer was of vague nature. Infact Railway Quarter of Byculta was allotted: to him but recovery was made regarding sub letting of Railway Quager of Mazagaon and at G. T. Nagar from which quarters were not allotted to second party. The case of allegation of sub letting Railway Quarter of Mazagaon is: made out but actually Quarter of Byuculia was allotted to the second party. It is not explained as to how Railway. Quarter of bycutta is included in the said, list which is not at all related in the enquiry. Besides Inquiry Officer exonerated charges of subletting Railway Quarter still, R.S. Rajoria considered evidence observing charges are provedwhen second party did not accept the other officer given by R.S. Rajoria to pay Rs. 10,000 to show favour.He complained about R. S. Rajoria to show how he has shown. his bias mind and how he ignored the findings of the Inquiry. Officer. Besides he was purposely not promoted. Even damages Rs. 57.141 were recovered illegally. So he prayed: to recover Rs. 10,500 per month for a period of 5 years. He also prayed to give promotion with instruction to figs, parry. with antillary benefits.

 This is disputed by first party by filing written statement at Ex-15 stating that, second party is not a 'workman' and as such he is not entitled to raise dispute Besides in is coarended that, he has not exhausted departmental remedies before approaching the Tribual or Conscilination Officer and on that count also his reference faits. Besiders it is contended that he filted recovery application under Section 33 C (2) before NIT-1. Mumbui where he got relief. Even he is promoted as per his claim. But he did not report on promoted place since he was not getting ITRA facility which is available at Mumbai. So it submitted that, entire claim of second party does not stand and require to be rejected.

4. In view of above pleadings issued framed or Ex-18 are answered against it as follows:

TERRITE

FINDINGS

 Does First Parry prove that decision taken by it of imposing punishment of decluction of salary from the scale of Rs. 8500/- to Rs. 6500 for 5 years is justifiable?

Does not Survive

2 Does Second party prove that he is entitled for the promotion as stated in para 2.1 of the Statement of claim?

No.

3 Does he prove that action taken by first party in not refunding the rent was against rules?

 Y_{Σ_N}

4. Does he prove that action taken by first party of cancellation of Railway Quarter allosted to him was against the principles of natural justice?

Does not survive.

5. Is Second pany entitled for setting aside the pointsh ment awarded to him by order dated 14-7-2003 and of 1997 and is entitled for refund of damages?

Yes.

6. What order?

As per order below.

Whether second party is a workman?

Yes

REASONS

Issue No. 7:-

S. This is an important issue which goes to the roof of the status of the second party workman as first party has challenged his status at the beginning of the written statement contending that second party is not a "workman" as he was discharging duties in the capacity of Suprvisor. Except that, no case is made out by first party. Moreover it is pertinent to note that, application filed by second party was decided by CGIT-I where CGIT-I Mombai observed in said Application of second party as "workman". Suid was decided on 9-1-2006. Besides in the evidence no specific case is made out and no evidence is led to project on duties

of the second party to treat him as 'not workman' an dexclude has from the definition of "workman". Burden of proving this issue rest on both. Second party has to prove that be is workman whereas first party has to prove that he is 'not workman'. The case of bolding by Inquiry Officer on the charges of sub letting Railway Quarter to others allowed to second party are admitted and reveals that, second party was presumed by the first party as a 'workman' for ever in the proceeding as well as initiating enquiry against him. In recent rolling Heth'ble Bombay High. Court while deciding case of George Thomas V/s Science Technical Centre published in 2007 II CLR page 185 recently. observed that, "When all the time workman is treated as employee, he is to be declared as a workman under Section 2 (a) of the Industrial Disputes Act." Considering this midcase made out by both I conclude that, second party is workman.

Issue No. 1 :--

This issue is regarding imposing punishment of reduction of salary from scale of Rs. 10,500 to Rs. 6,500 for 5 years which was questioned by second party and to see whether it was legal? As far as this issue is concerned, we find no pleading is made out by second party in claim statement filed at Ex-13 vis-a-vis in the Written Statement filed by first party at Ex-15. I think this issue came and appears to be from dispute referred by the Central Government, Ministry of Labour about treating as one of the dispute. However nothing is stated by second party on this in this reference nor considered it by first party to reply it though it is actually one of the subject matter of the reference. In the entire reference both have concentrated on sub-letting of Railway Quarter by second party, chargesheel issued against second party, enquity conducted, charges were exonerated by the Inquiry Officer still management took different view and recovered the tent from second party from his wages. Hesides issue of promotion is made out by second party and it is challenged. By first party. As far as enquiry, reduction of salary from Rs. 8500 to 6500 is concerned is not at all subject matter of the evidence led by both and case made out by them. So I conclude that, this issue does not arise since not traced by both.

Issue No. 2 :---

This issue is regarding entitlement of promotion. by second party. Said is denied by first party saying that, though promotion was offered to second party has ignored. it and now he cannot claim promotion. In that respect if we peruse cross examination of second party we find, that he admitted that he was promoted on 4-11-99 as Sr. Section. Engineer. He further stated that, he was not officially informed. Answer given by second party to this reveals. that, he was promoted and he is not denying that he was promoted. Even he admits that, he has produced the copy of it obtained by him from others, where his name is also included in the promotion list. When he was questioned on that, he replied that, he got same at that time only. Even he admits that he was promoted and transferred to Kurduwadi and when question as to why he did not proceeded to promoted posting to which he replied that question does not arise since department proceeding was pending against him. In my considered view pending department proceeding cannot be excuse to join on transfer

and promotional post. He also admits that, due to transfer to Kurduwadi he was losing HRA from 30% to 7.5% since He was getting 30% at Mambai and will be getting 7.5% at Kurduwadi. Besides he answered that, the cannot be transferred on promotion since he is senior most. He admits that, he has not challenged promotion on that groupd before any forum. So all these reveals that, opportunity was given to him by promotion on the post of Sr. Section Engineer on 4-11-99 but he admits that, he did not report on that post. This reveals that, he suo motto waived his right of promotion. As of right as per his whims and ideas he cannot claim promotion, as observed by Apex, Court recently where it is observed that promotion is not a right.

lamaes No. 3 to 5 :---

- The main prievance of account party is that. enquiry conducted against him on the ground of alleged sub letting quarters of Mazgatta and at GTB Nagaz was not correct. Charges were not proved. Though the charges were exoderated charge sheet was served and enquiry was conducted. According to second party question of subletting Railway Quarter of Mazgaon and at OTB Nagar. does not arise as quarter was allotted to him of Byculls and not of Mazgaon and GTB Nagar. Even haquiry Officer exonerated the charges of subletting Railway Quarter of Mazgaon and GTB Nagar, Even there was not evidence. before Inquiry Officer to conclude that, second purty has literally subtened Railway Quarter to other. Even there was no finding from Inquiry Officer on that point against the charges of subletting quarters. Still Management has punished him and recovered damages.
- The witness examined by first party Ea.-21 admits. that the quarter was not checked to ascertain whether it is sub-letted by second party. Even he admits that, charges were exonerated by Inquiry Officer. Even he admits that, damages, recovered from second party of Rs. 32,300 were refunded to him. Even CGIT-I, Mumbai in 33 C (2) Application observe said recovery of damages were ittegal. and second party is entitle to recover it from first party-Said order is not challenged by first party. Even second party admits that, damages Rs. 32,196 were repaid to him. after 9 years. When finding of Inquiry Officer was not against second party and when charges were not proved. and when damages recovered were repaid to the second party as per order passed in application filed under Section. 33 \mathbb{C} (2), I am, of the view that, now second party is not entitled to any relief. It is proved that, cancellation of Railway Quarter allotted to him and charge of subletting it. was against the principles, of natural justice. However this Court cannot consider that aspect though representative of second party place reliance on number of rulings.
- As far as issue No. 5 is concerned, he has secured. order of CGTT-1an Application filed under Section 33 C (2).
- So if we consider all that complete with case made. out by both. I conclude that at present second party is not entitled to get any more. Hence the order.

ORDER

Reference is rejected.

A. A. LAD, Presiding Officer

Date: 12-6-2007

नई दिल्ली, 17 जुलाई, 2007

का, आ. 2149,—औद्योगिक विवाद अधिनियम, 1947 (1947 का (4) की धार 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंग्टिया के ग्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बोच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, आन्धुर के पंचाट (संदर्भ संख्या 4/2002) को प्रकारित करती है, की केन्द्रीय सरकार को 17 7-2007 को प्राप्त हुआ था।

> (सं. एल-12012/357/2001-आई आर (बी-1)] अजब कुमार, डेस्क अधिकारी

New Delhi, the 17th July, 2007.

S.O. 2149.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government beselve publishes the Award (Ref. No. 4/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Kampur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workings, received by the Central Government on 17-7-2007.

[No. L-12012/357/2001-IR (B-I)] AĴAY KUMAR, Desk Officet ANNEXURE

BEFORE SRI R. G. SHUKLA, PRESIDING OFFICER, C.G.LT. CUM-LABOUR COURT, KANPUR, UTTAR PRADESH

Industrial Dispute No. 4 of 2002

In the matter of dispute between :

Sr. Satepdra Komar Jam 5/o Late Sh. Parmeshi Prasad Jain R/o 23 Jhanda Bazar Dehradun:

And

The Gederal Manager
State Bankrof India
Zonal office
Rajpur Road Madhaban Hotel
Debradun.

AWARD

1. Central Government, Ministry of Labour, New Delhi, ride antification No. L-12012/357/2001-IR (B-I) dated 17-1-2002 has referred—the following dispute for adjudication to this tribunal:—

"Whether the action of the State Bank of India Dehraduo in terminating the services of Sh. Satendra Kumar Jain Pigmy Deposit Agent, w.c.f. 10-3-1989 is justified? If not, what relief he is entitled?"

- 2. In the instant case after receipt of the reference order from the appropriate government, registered notices were issued to the contesting parties by the Tribunal for filing their claims and counter claims. In response to the same contesting parties fited their claim and counter claim perfore the tribunal and thereafter rejoinder statement was also tiled by the workman.
- It is needless to mention that neither the concerned work than nor his authorised representative has even

aue: ded the proceedings of the case at any point of time. Whereas statement of calim was filed on behalf of the workman through the brief holder Sh. Pawan Kumar Tripathi, of the representative for the workman, rejoinder statement on behalf of the workman was received in the office through post. It may also be pointed out that the rejoinder statement filed on behalf of the workman was rejected by the minunal vide order dated 14-7-2003 as the same was not found to be proper and the case was posted for exidence of the parties. Neither workman himself nor his representative ever presented themselves before the tribunal for adducing evidence in support to their case. Management apart from filling documentary evidence has also adduced trail evidence of their witness by name Index. Mohan Bhargawa as M.W.1, but he was not cross examined from the workman as none was present on the date of recording evidence of the management. The evidence of the management, therefore, goes un controverted and the tribunal feels no hesitation in believing the same. It is also clear from the conduct of the workman that he palpably failed to substantiate his claim before the tribunal by adducing acceptable evidence real as well as documentary.

- Any way at may be pointed out that it is common ground of the concesting parties that the contesting parties parived at an agreement dated 29-3-79 in which it was agreed upon between the parties that the concern workman will provide services to the management of State Bank of India. for which he will be paid remoneration. This agreement was arrived at under a scheme know as Janta Deposit Scheme and a copy of the agreement dated 29-3-79 is on record of the case. Under the terms of agreement the workman, was required to open small accounts under the said scheme from public at large and to deposit the same with the bank that the workingn will be provided wages/ remuneration by way of commission on the amount deposited by the workman under the scheme. It was also agreed upon between the partles that in case of violation of any one of the conditions of agreement, his agency is liable to be terminated without any prior notice by the bank.
- It is the specifies case of the workman that the bank has terminated his services w.e.f. 10-3-89 without any notice or without having any departmental inquiry against him, therefore, the termination of his services from bank is in gross violation of principles of natural justice. It is the (unities case of the workman that the bank had also lodged a F. I. R. on 10-3-89 under section 408 of I. P. C. on false ground which altimately culmmated in favour of the workman as he was honorably acquitted by the criminal cours vide judgement dated 17-12-1998. The workman thereafter approached the authorities of the bank for his reinstatement but all in vain, Ichas been further pleaded by the workman that in any case he could not have been removed from the services of the bank without there being a regular departmental inquiry against him on the alleged charges for which F. I. R. was lodged by the bank. Lastly it has been pleaded by the workman that the entire action of the opposite party is wholly allegal and violating the sules

governing the service conditions and principles of not: 121 justice therefore, he should be reinstated in the services of the bank with full back wages, continuity of service and all consequential benefits.

- 5. On the other hand the claim of the workman has been contested by the management bank on variety of grounds, inter alia, that the workman was never appointed against any sanctioned post by the management of State Bank of India after subjecting him through regular selection process nor any appointment letter was ever issued to him by the bank. As a matter of fact the bank has terminated the terms of agreement bound agency, as the work of the workman was not satisfactory which cannot be construed as removal from service as claimed by the workman. It has also been pleaded by the bank that the bank hired the services of the workman under Janta Deposit Scheme and the workman was paid his commission on deposit. He was never paid his wages as was paid to regular and permanent employee of the bank. It was clearly indicated in the agreement that bank may without notice terminate the agency at any time, if the deposit collector; (i) commits t reach of any of the terms and/or conditions of this agreement and of the Rules and Regulations referred to above and also of other such directions as may be issued from time to time by the bunk in this behalf; (ii) is adjudicated. insolvent or is convicted by any criminal court for any offence involving moral turpitude or is declared to be of unsound mind by any court of competent jurisdiction or; (iii) suffers in the opinion of the bank from any physical or other infirmity that renders him unfit for discharging or fulfilling his duties and obligations under this agreement; (iv) is guilty of misappropriation or misapplication of amounts collected from the deposits; (v) commits any act which the bank considers as prejudicial to its interest or is found defaulting habitually in observing the Rules and Regulations or directions.
- It has further been pleaded by the bank that during. the period April 1988 to November 1988 workman collected Rs. 34,748 from various Janta Deposit Holders but did not deposit the same in the branch, which was required to be deposited by him either on the same day or at opening hours of the branch on the following day. The workman yide his letter dated 18-3-88 has admitted that he has not deposited the same in the branch. This clearly amounts misappropriation of funds of the depositor and also not observing rules and regulations framed by the bank. Regarding termination of the agency of the claimant, the Branch Manager of the bank issued a public notice dated 1-3-89 in local news paper known as 'Doon Darpan' and after cancellation of his agency the claimant returned all the papers, 1-Card, deposit slip bill, account opening forms esc. It has also been pleaded by the bank that various depositors from whom the claimant collected deposit under the scheme during the above period aggregating to Rs. 33,748, contrary to the terms of agreement he had deposited only a sum of Rs. 23,600 in these instalments and sought further time vide his letter dated 28-4-89 for deposing.

- the rest of the arrount. When all effects failed to get deposit the remaining amount from the claimant Branch Manager lodged FIR dated 28-5-89 against the workman at P S Kotwali, Dehradun. The work of deposit collector in Janta Deposit Scheme and the work of regular and permanent employee of the bank is distinguishable and cannot be brought at par with each other. Bank has simply terminated the agency of the claimant in view of stipulation contained under sub provision (1) of prevision 4 of the agreement dated 29-3-79. It has also been alleged by the bank that when the claimant never remained in the employment of the bank at any point of time question of terminating his services from the bank does not arise at all and the wiskman on this score cannot be held emitted to be reinstated in the services of the bank.
- Ex parte arguments on behalf of the hank were. heard in detail by the tribunal and the tribunal has also examined the file carefully. As pointed out above, the evidence of the management in support of their case goes uncontroverted hence the tribunal feels no hesitation in believing the case as set up by the opposite party that bank has simply terminated the agency of the ciaimant insiead terminating his service from the bank. Tribuna? is: further of the view that termination of agency under contract connot be construed to be termination of the service of the claimant by the bank. The claim of the claimant also appears to be barred by the provisions of Section 2 (on)(bb) of the I. D. Act, 1947. It is settled law that the tribunals are not empowered to reduce or enhance the scope and ambit of the schedule of reference order in view of sub-section (4). of Sec. 10 of the Act, therefore, it will be futile exercise on the part of this tribunal to travel beyond the scope and ambit of the terms of agreement dated 29-3-79, which is the very basis of schedule of reference order which clearly indicate that the bank has terminated the agency of the claimant in terms of Para 4 (1) of the agreement dated 29-3-79. To view of it cannot be presumed even for the sake. of arguments that the alleged claimant ever remained in the active employment of the opposite party bank or bank has ever issued any appointment letter in his favour or there existed any regular or permanent vacancy at the branch therefore, from this point of view the schedule of reference order appears to have become introcuous. Therefore, it is: concluded that bank have never terminated the service of the claimant from any regular or permanent post, question. of granting him relief as claimed, does not trise at all.
- 8. In the end it is held that workman has palpably failed to substantiate his claim before the tribunal by adducing acceptable evidence, therefore, be cannot be held entitled for any relief and the reference order is bound to be answered against the claimant.
- 9. Accordingly award is made absolute holding that Sri Satendra Kumar Jain is not entitled for any relief and the award is decided against the claimant and in favour of the opposite party bank.
 - Reference is answered accordingly.

R. G. SHUKLA, Presiding Officer

नई दिल्ली, 17 जुलाई 2007

का,आ. 2150.—औत्योगिक विवाद अधिनियम, १९४७ (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोंकन रेखदे कॉरपोरेशन लिमिटेड के प्रयंघतंत्र के संबद्ध नियोजकों और उनके भर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय भरकार औद्योगिक अधिकरण सं II, भुष्यई के पंचाट (संदर्भ संख्या 30/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-2001 को प्राय्त सुआ था।

[सं एल-41012×06/2001 आई आर (बी])] अजर सुभार, इंस्क अधिकारी

New Deibi, the 17th July, 2007.

S.O., 2150.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.30/2001) of the Central Government industrial Tribunal-II, Mamhai as shown in the Annexure in the Industrial Dispute between the Management of Konkan Railway Corporation Ltd. and their workman, which was received by the Central Government on 17-7-2007.

(No.L-41012/06/2001-IR (B-D)

AJAY KUMAR, Dosk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.E, MUMBAI

Present: A. A. Lad, Presiding Officer

Reference No. CGIT-2/30 of 2001

EMPLOYERS IN RELATION TO THE MANAGEMENT OF KONKAN RAILWAY CORPORATION LTD

The Chref Linguiser. Kenican Rapway Corporation Ltd., Kenican Couth), Renicaly Cotaplex, MIDC, Majole Ramager 445 639 (MS)

Aist

The Workman, Mr. Revirsalt Mannhar Muiye, Post Panval, Tal. & DistajRatnagio, 415 619 (Minurashita)

APPEARANCES

For the Employer : Mr. Gurunath Naik Advecate

itorahe Workman ; Mr. J. H. Sawant Advocate

Mumbai, deted 11th June, 2007

AWARD

The Government of India. Ministry of Lahour, by its order No. L-41012/6/2004 [IR(B I)] dated 22-02-2001 in exercise of the powers conferred by Clause (d) of Subsection (1) and Sub-section 2 (A) of Section 10 of the Indistrial Desputes Act, 1947 referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Chief Engineer (South) Konkon Railway Corporation Ltd., Ratnagiri in terminating the services of Shri Ravinder Manohur Mutye w.e.f. 1-7 1995 is legal and justified? If not, in what relief the workman is entitled for?"

- To support subject matter referred in the dispute. second party rely on claim statement filed at Ex-6 stating that, he joined first parry in the unpacity of wotchman w.e.f. 13-12-92. He worked continuously. He was posted for 12. hours watch duty at Open Yard Store. He was attending work which is of permanent nature. He was signing recordand muster maintained by first party. He was supervised by Assistent Controller of Stores. He was puid monthly on daily wages for Rs. 30 for 12 hours duty. First party exploited. second purty workman taking advantage of his social and economic backwardness. He was not granted privitegaleave or any other benefits. On 01-07-95 he was lasked by Chief Engineer not to report on duty. According to secondparty, said instructions were against the privisions of Indistrial Disputes Act, more precisely said instructions. violate Section 25 F of Industria! Disputes Act. So it is: submitted that instructions given by Chief Engineer (\$200a). preventing workman not to attend duty from 1-7-95 be quashed and set aside directing first party to reinstate him with benefits of backwages and other consequential benefits.
- This is disputed by first party by filling wratten. statement at Ex-8 denying relationship as Employer-Employee. It is contended that second party was taken on Contract basis. He was purely working as temporary workman on daily wages. No assignment was given to himby the first party. Wages were given at the rate of Rs. 30 per day. He automatically stopped in reporting from duty from 1st July, 1995. The alleged termination w.e.f. 1st July. 1995 is challenged by second party by approaching ALC. (C) in 2000 i.e., after about five years. He worked with first party nn confract basis from 13-12-92 to 1-7-95 and remained. absent without intimation and abandoned the job thereafter. When second party was not regular employee does not amact the protection given under Industrial Disputes Act. and to that scenario first party was not supposed to give notice, offer retrenchment compensation or follow procedure of issuing charge-sheet on abandonment of jusand conduct enquiry. So it is submitted that, claim be rejected.

4 In view of above pleadings, my Learned Producessor framed issues which are answered against them:

SALIES Person Whether the workman was in continuous service as contemplated under the Industrial Disputes Act? No Whether the management complied with the provision. marie under the Konkan Railway Corp. Ltd., (Discipline) and Appeal Rules) 1992.7. Does not arise 2a. Whether management proves that workman abandoned the service w.e.f. 1-7-1995 ? Yes Whether the action of the management of Chief Engineer (South) Konkan Railway Corporation Ltd., Ramagiri*: in terminating the services of Shri Ravinder Manoher Malye w.e.f. 1-7-95 is legal and justified? Does not arise 4 What relief the workman is:

Reistons

and areas

. 10

Does not arise

Issue No. 1:

entitled to ?

- 5. Second party claimed that, he was instructed by Chief Engineer (South) not to report on duty from 1-7-95 claiming that he worked with first party from 13-2-92 as a workman and having—wasch and ward duty in an Open Yard Store. He also claimed that he was getting salary for his 12 hours work on duty wages of Rs. 30. He also claimed that he was not getting public holidays as well as earned leave. He also claimed that he was supposed to work for twaive hours. All these things are admitted by first party. Even case of the first party is that he was taken on contract bosis and was paid on daily wages.
- 6. It is admitted position that, second party was not interviewed and selected by first party. It is matter of record that to have watch & wand daty, in an Open Yard Store and that too for 12 hours shift if considered, coupled with say of the second party that, he was not getting public holidays or any other concession as regular employee status was given. It is rather clear that, he was myaged on daily wages. Besides case of the second party that, he was to work in a shift of 12 hours which is not at all applicable to a regular employee also support the case of daily employment of second party. Besides no appointment order is produced and even not claimed by second party he was appointed

by first party on regular basis. Even he has not produced any document that he signed master roll and was a regular supployee of first party. When all these questions remain unantwered question arises whether such a person can be called as a regular employee of first party?

- It is fact that he worked confinences by from 13-2-92. to 1-7-95 and did not work thereafter. Case of the first party on that is second party abandoned the jeb and whereas case of second party is that he was instructed not to report on duty from 1-7-95. That means if that is so, definitely it \cdot was injustice on second party as he is almostly asked not to report on duty from 1-7-95. It is matter of record that, said grievances as alleged by second party are agitated by him first time in 2000 and that too before Gos ALC (C). That fact is not desired by second party. So this act of second party and the decision taken in challenging the so called refusal by the Chief Engineer w.e.f. 1-7-95 if considered, question arises, how one can wait for such a long period. on such plain instruction not to report on duty? Even that question was put to second party in cross but the unable. to explain it stitute totily and any that he did not get advice on that point. All that in my considered view, raising dispute or making grievances does not require any guidance. If at all it required guidance then why in 2000. only he raised it? All those questions remained usagewered.
- The evidence led does not prove that, he worked continuously as contemplated under Industrial Disputes Act as a employee of first party. On the contrary first party claim that he was taken on contract basis and he stopped reporting from 1-7-95. That fact is not disputed i.e. regarding absentee of the second party from 1-7-95 onwards. When there is such a long absence, it reveals that, second party is not doing work continuously as expected under industrial Disputes Act of first party but definitely might have worked on contract basis. Moreover, case of second party of 12. hours shift, payment on daily, wages Rs. 30 and not getting any concession of public holidays and other things reveals that he did not work continuously as expected under Industrial Disputes Act. So I answer this issue in the negative. . .

Issue No. 2 & 3:

- 9. Case of the second party that, without following provisions of Industrial Disputes Act he was illegally prevented in reporting on duty and action of the Chief Engineer South in instructing second party dot to report on duty w.e.f. 1-7-95 is illegal. Whereas case of the first party is that since second party was not regular employee of it, question of following provision of Industrial Disputes Act does not arise. Besides the suo motto stopped in reporting on duty w.e.f. 1-7-95. In that scenario question of instructing him not to report on duty by Chief Engineer (South) does not arise.
- 10. Besides in that connection second party place reliance on his affidavirifiled at Eu-17, in the cross he admits

that he was not made permanent. He admit that no such a letter was given by first party. He admits that he was not served by letter about leaving job from 1-7-95. He admits that, he received wages up to June 1995. He states that though he informed in writing about his refusal on duty from 1-7-95 he has no proof of it. Even he admits that he kept silent from 1-7-95 to August 2000. AB this reveals that second party kept silent for 5 years and when he got guidance he rather raised dispute to see what can be achieved. Even witness examined by first party at Ex.-20, 21 and 22 does not support case of the secondparty and throw any light to conclude that second party. was prevented in reporting on duty w.e.f., 1-7-95. When second party is not workman of first party question of following provision of Industrial Diagones Act does not usise. Besides when he is not workman of first party. question of giving instruction by the Chief Engineer to second party ript to report on duty from 1-7-95 also does not arises. On the contrary silence of second party from 1-7-95 till August 2000 i.e. till he approached the Goa AL C. (C) proves that, he himself estopped in reporting on duty. which is noting but abandonment of job by the second party on his own and when he abandoned the job and when he is not regular employee of first party question of giving charge spect, or notice about absenteeism or holding. enquiry does not arise. So I conclude that first party was not supposed to conduct enquiry and does not require to follow provision of Industrial Disputes Act for such self. decision of second party since second party abandoned. the job. Accordingly I answer these issues to that effect.

Imme No. 4:

10. When second party fails to prove that, he is not employee of first party and was illegally terminated, question of claim made by him does not require to consider. On the contrary his attitude, his approach and his silence from 1-7-95 till August, 2000 reveal that he was not interested in the work and soo moto left. All this reveals that second party abandoned the job and it is not that due to so called instruction give by Chief Engineer (South) not to report on daty w.e.f. 1-7-95 does not arise to treat as a termination. So I conclude that, second party abandoned the job.

11. In view of discussion above I conclude that, accord party is not catified for any relief and as such this reference required to be rejected. Hence the order:

ONDER

Reference is rejected.

Date: 11-06-2007

A. A. LAD, Presiding Officer

नई बिल्ली, 18 जुलाई, 2007

का.जा. 1151.— औसोगिक कियाद अधिनियम, 1947 (1947 को 14) की सन् 17 के अनुसरण में, केन्द्रीय सरकार मुखई पोर्ट इस्ट के प्रेमेक्टर के संबद्ध नियोजकों और उपके कर्मकारों के बीच. अनुबंध में निर्दिष्ट और्छोगिक विवाद में केन्द्रीय सरकार और्छोगिक अधिकरण/क्रम न्यायालय, सं. ॥, मुम्बई के पंचाट (संदर्भ संख्या 2/\$2/2003) को प्रकाशित करती है, यो कंन्द्रीय सरकार को 16-7-2007 को प्राप्त हुआ वाष्ट्री

> (स. एल-31011/9/2003-आई आर (बी-II)) राजिन्द्र जुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007.

S.O. 2151.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/52/2003) of the Central Government Industrial Tribunal-cum-Labour-Court-II, Mumbui as shown in the Ameaure in the Ameaure Dispute between the Management of Mumbai 'Port Trust and their workman, received by the Central Government on 16-7-2007.

[No. L-31011/9/2003-IR (B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT:

A. A. Lad. Presiding Officer

Reference No. CGIT-2/52 of 2003

Employers in relation to the Management of Mumbal Port Trust

The Chairman, Mumbai Port Trust, Port Bhavan, Ballard Estau, Mumbai-400038

And

The Workman,

The President
Transport and Dock Workers Union
P. D'mello Bhavan,
Carnac Bunder,
Mumbai.

APPEARANCES.

, For the Employer

Mr. Umesh Nabar, Advocate

For the Workman

Mr. A. M. Koyande, Advocate

Mumbai, dated 5th June, 2007

AWARD PART-I

The Government of India, Ministry of Labour, by its Order No. L-31011/9/2003-IR(B-II) dated 11-09-2003 in

exercise of the powers conferred by Clause (d) of subsection (1) and sub-section 2 (A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Mumbai Port Trust is renoving from service of Shri Pandharinath Lokunde, Shore Worker, Docks Department MBPT w.c.f. 9-5-2001 is legal and justified? If not, to what relief Shri Pandharinath Lokunde is cutified to?"

- Claim Statement is filed at En-11 by Secretary. Transport & Dock Workers! Union stating that the services of the concerned workman was terminated illegally w.c.f.. 9-5-2001. Said was challenged before competent authority. which did not consider and concerned workman was removed from employment. Union raised dispute regarding. concerned workman's termination stating that chargesheet dated 28-08-2000 served on concerned workmen alleging of habitual absence sm was false one. It was alteged that concerned workman remained absent unauthorisedly from 20-05-1998 to 31-12-1998 and thereafter continued to remain absent from 08-01-1999 to 28-08-2000 by which he violated Regulation 3 (TA) (ii) and of the B.P.T. Employees (Conduct) Regulation 1976 read with Regulation 8 & 12 of the BPI Employees (Classification, Control and Appeal) Regulation 1976. According to union concerned workman was already. penalized for the period of 1994 to 1998. He also applied for regulation of his absence and same was regularised. His absence from 8-1-99 to 12-10-2000 has justification as he was mentally disturbed. He was admitted to Pune hospital and was taking treatment. Said was explained by him, still show cause notice dated 29-3-99 was issued by first party about his absenteeism proposing the penalty of removal from services which he replied still, said action. was confirmed. The appeal filed by him was turned down.
- 3. According to him, though there was evidence before Inquiry Officer about his absentenism and sufficient grounds to regularise his absentenism instead be was not considered for regularisation of his absentenism and very harsh and disproportionate action of removal was taken. So it is prayed that, findings given by Inquiry Officer may declare perverse and punishment of removal be set aside with direction to first party reinstate concerned workman with benefit of backwages and continuity of service.
- 4. This is objected by the first party by filing written statement at Ex-15 stating that, second party is habitual in remaining absent on duty. On number of occassions, he remained absent without informing or without getting sanctioning leave which affect the working of the first party. Said workman was working as a Shore worker. Even his service record was not clean and unblemished.

though number of warnings were given to improve his attendance, instead of improving in it, he developed it by remaining absent unauthorisedly. He was not having habit to intimate cause behand absenteeism. He was not applying to advance for leave. He did not explain why his absenteeism should be regularised when served with charge sheet and face enquiry. He did not utilize that opportunity to explain his absenteeism and justify how it is to be regularised? Since there was no reason to remain absent from duty anauthorisedly, first party by holding enquiry and observing findings given by the Inquiry Officer which has base and grounds rightly concluded to remove second party observing not interested in the work. Since second party has no justification and since findings given by Inquiry Officer is just and proper, it is submitted that, action taken by first party on the said basis be maintained observing findings not perverse.

5. In view of above pleadings, issues are framed at Ex-17. Out of it issues No. I of perversity of findings is treated as preliminary issue which reads as follows alongwith its findings.

lasue

Pindings:

1. Whether findings perverse?

No

REASONS

- 6. Second party Union challenged the removal of the concerned workman dated 9-5-2001 which was taken by first party on the basis of the enquiry conducted after issuing charge sheet and obstaining findings of the Inquiry Officer. According to the Union Inquiry Officer was not having reasons to conclude about absence is in treating it was unauthorised of the concerned workman. Concerned workman submitted all documents which were not considered by Inquiry Officer and without going through those, findings given by Inquiry Officer is perverse.
- 7. It is pertinent to note that second party though challenges the perversity of findings decided not to lead evidence by steping in to witness box and by intimation Ex-18 he inform to that effect.
- 8. So the evidence before us is the evidence recorded by Inquiry Officer about absence is m which is filed by the first party in the form of Xerox copies with Ex-16 to decide whether findings of Inquiry Officer is perverse? On the basis of said both argued their respective case.
- 9. Before us is the point of findings of laquity Officer. According to second party findings of Inquiry Officer are perverse. That means second party is not challenging the enquiry and its procedure and fairness of it. By this second party want to challenge the findings of Inquiry Officer only.
- 10. We have to see the evidence placed before inquiry Officer which we find with Ex-16 and more

precisely frompage on 21 on wards till page 30. The perusal of the said findings reveals that concerned workman has not prayed for leave in advance. From question No. 2 it reveals that, what ever leave was at the credit of concerned workman were sanctioned to him and remaining portion was bleated unauthorised absence. Question No. 4 reveals that though concerned workman produced medical certificate of Dr. Sarode, Psychiatrist, Pune Hospital from 8-1-99 to 3-11-2000 it was produced at the time of joining of duty and no intimation was given about his admission to hospital and taking treatment from concerned Dector and absentuism. Even it is brought on record that concerned workman did not try to communicate or convey the reason behind absenteeism so as to enable first party to adjust his work. From this enquiry it is not pointed out by the second party's advocate which evidence was agonored by the Inquiry Officer observing concerned workman guilty of the charges of unauthorised. absentecism?, Nothing is pointed out.

 White medical certificate of Pune Doctor way produced at the time of joining duty for period of 8-1-99. to 3-13-2000 and when it was not intimated to first party, by any means by the concerned workman, about his alleged sickness it reveals that charge of 'unauthorised absenteeism* means "proceeded on leave without sanction" is proved against concerned workman. It is not pointed our b) the concerned workman that, he was no authorised leave and was punctual in reporting to the first party. Even charge of unauthorized absenteeism is: not for once is it is going on for years together which revels that, concerned workman developed said habit of remaining ablent without intimation and sanctioning leave. Even he is unable to point out his grievance before authority vis-a-vis before this Court, So if we consider all this coupled with case made out by both, I conclude that, the findings given by Juquiry Officer cannot be observed perverse and Dounclude that findings, is not perverse and bence the order.

ORDER

- Findings of the Inquiry Officer are not perverse.
- Both parties to appear in this reference on the point of quantum of punishment.

Date: 05406-2007

A.A. LAD, Presiding Officer

: नई दिल्ली, LB जुलाई, 2007

का, 30. \$152.— औरधोगिक विवाद अधिनियम, 1947 (1947) का 14) की थाए 17 के अनुसरण में, केन्द्रीय सरकार बैंक आंक इंडिया के प्रविधती के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिश्व औरधोगिक विवाद में केन्द्रीय सरकार औरधोगिक अधिकरण अभ नेपासालय नं 1, मुम्बई के पंचाट (संदर्ध संख्या 44/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार की 16-7-2007 को प्राप्त हुआ था।

> [सं. एल-120:2/36/2004-आई. आर. (ची-प्र)] राजिन्द्र सुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007.

S.O. 2152.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.44/2004) of the Central Government Industrial Tribunal-cum-Labour Court-I, Mumbai as shown in the Andexure in the Industrial Dispute between the management of Bank of India, and their workman, received by the Central Government on 16-7-2007.

[No.L-12012/36/2004-IR(B-II)]

RAJINDER KUMAR, Desk Officer

ANNEXIRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, MUMBAI

Present : Justice Ghanshyam Dass, Presiding Officer

Reference No. CGIT-44 of 2004

Parties:

Employers in relation to the management of Bank of India

And

Their Workmen

APPEARANCES:

For the Management: Shri Laney D'Souza

Shri Ganeshan

For the Workman : Shri Patel, Advocate.

State : Maharashtra

Mumbai, dated 28th Jume, 2007

AWARD

This is a reference made by the Central Government in exercise of its powers under clause (d) of Sub-section 1 of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) vide Government of India, Ministry of Labour, New Delhi Order No. 1-12012/36/2004 -IR(B-II) dated 31-5-2004. The terms of reference given in the schedule are as follows:

"Whether the serion of the management of Bank of India in awarding the punishment of Tremoval

from service with superannuation benefits and without disqualification from future employment vide order dated 9-12-2002 to Shri S.B. Jadhav, Cashier-Clerk is justified, proper and in proportion to the alleged charges of misconduct? If not, what relief the workman is entitled to and from which date and what other directions are necessary in the matter?"

Mr. S.B. Jadhav (for short workman) was issued tharge sheet dt. 27-5-2002 which runs as follows:

"While functioning as officiating Cashier incharge at Bank's erstwhile Cotton Exchange Branch during May 1998, acts of misconduct, as hereinafter mentioned are alleged to have been committed by you:—

That, you accepted in clearing 5 cheques unused account payer and made to the order totalling to Rs. 49.89,362/- issued by the Customs Authorities to different parties having accounts with Bank of India in the third party C/D account of M/s. Vijaya Trading Company, the details of which are furnished hereunder;—

Sr. No		Cheque No.	Credited On	Amount of Cheque (Rs.)	Cheque in favour of BOI A/e.	Collected in the Account of
1.	RB1, Fort, Mumbai	83700 i	6-5-1998	3,71.37U-	Sunita Garments	C/D A/c No. 40160 Vijay Trading Co.
7	RBI, Fort, Mumbai	837002	6-5-1998	4,21,927/-	Sri Germents	-do-
3.	RBI, Fort, Mumbai	839090	21-5-1998	20,92,263/-	Dadar Overseas	-do-
4.	RBI, Fort, Mumbai	839470	22-5-1998	13,34,843/-	Subita Garments	-do-
5.	RBI, Ext, Mumbaj	839669	22-5-1998	7,68,956/-	Designate Overseas	-do-

That, in terms of Bank's instructions, although, the facility of collection of cheques in third party accounts can be selectively extended to certain valued customers of old standing against their indemnity, such z (actility was expressly forbidden in the case of dividend/ interest warrants/refunds orders. The 5 cheques accepted by you were issued by the Customs Authorities and were drawn on Reserve Bank of India and were in fact duty draw back refonds issued to the exporters. In view of this position, you should have been all the more careful white accepting the aforesaid cheques in a thrid garty account. Further, you have accepted account payee order choques for large amounts in the third party account without obtaining indemnity from the account holder. The account in which the chaques were collected esned be termed as an account of valued customer of oid standing, as the account has been opened on 7-11-1997 and had only negligible balance at the end of esch day. Moreover, when crossed cheques are collected in third party accounts, endorsement of the payee is a must; yet in all these 5 cases, you had accepted the cheques in gross violation of Bank's norms, although no endorsement of the payer was appearing on the reverse of the cheques. Since the cheques were by way of payment of duty draw back and were crossed account. payee only. However, in gross violation of Bank's norms, you got these cheques collected in a third party. account and that too when none of the cheques were having any endorsement on the reverse. That the

proceeds of the account payee crossed cheques/refund orders thus collected in the third party account were withdrawn therefrom by such third party. Since the proceeds of the account payee cheques/refund orders were collected to third party's account without any mandate from the payee and in gross violation of the Bank's rules/Negotiable Instruments Act, Bank is not entitled for protection and is liable in respect of the amount of Rs. 49.89,362/- for wrongful conversion.

Your aforesaid, acts if proved, would amount to the gross misconduct of "doing any act prejudicial to the interest of the Bank" within the meaning of para 19.5 (j) of the Bipartite Settlement, which reads as under:

"Doing any act prejudicial to the interest of the Bank or gross negligence involving or likely to involve the Bank to serious loss"

- 3. The domestic enquiry was conducted by Shri S. N. Kanade, Chief Managez (O), Mumbai South Zone as Enquiry Officer. The workman duly participated in the enquiry after pleading not guilty. The enquiry resulted in against the workman. The copy of the enquiry report was supplied to the workman. The workman was imped a show cause notice for proposed punishment and at last the final punishment order dt. 9-12-2002 was passed by the Chief Mänagez, Bullion Exchange Branch/Disciplinary Authority.
- 4. The workman has challenged the enquiry and also the finding of the Enquiry Officer. He has also challenged the quantum of punishment.

- The workman has filled the affidavit of self in lieu of his examination in chief in support of his case.
- 6. The Bank has filed the affidavit of Shri. S. N. Kanade, Enquiry Officer in lice of his examination in chief. The parties have filed the documents which have been duly exhibited.
- 7. I have heard the learned counsel for the parties and gone through the record. The written synopsis filed by the workman has been perused.
- 8. The domestic enquiry is just and fair since there is no violation of any principle of natural justice. The workman was issued the charge sheet. He duly participated in the enquiry along with his Defence representative. The Bank examined witnesses before the Enquiry Officer and all of them were cross-examined on behalf of the workman. The workman was given due opportunity to lead the evidence in defence and he actually led it. He was given due opportunity of hearing. The procedure adopted by the Enquiry Officer appears to be just and fair. Nothing material is brought on record to show that the enquiry was unjust or unfair for any violation of principles of natural justice.
- 9. Now the question arise as to whether the finding of the Enquiry Officer is perverse and whether the punishment imposed upon the workman is proper.
- 10. Admittedly, the preliminary investigation into the matter was made by Stri. S. V. Vivekanindan, Chief Manager (Investigation) prior to issuance of charge abeet. Mr. Vivekanindan submitted his report on 6-6-2001 and supplementary report dt. 14-8-2001. The enquiry took place on the receipt of the notice from Police haspecter Shri. S. S. Mandlik of C. B. I. Special Crime Brunch, Belapur, New Mumbel for the allegations.

"It is alleged that 23 A/c Payee & Order crossing cheques, amounting to Rs. 20336 lakes drawn on Reserve Bank of India, Fort, Murabai and issued favouring vaious parties A/c BNOI by customs authorities towards Duty drawback, were allowed to be enclashed fraudulently through 3rd party Current A/c No. 40160 of M/s. Vijay Trading Co., (Proprietor Mr. Sudhir B. Mandal), Between 2-4-1998 and 29-6-98 le different to the bank's laid down norms and procedure by S/Shri D. U. Parmar, the Dy. Manager (Deposits) V. M. Parkhe, the Chief Cashier and Sunil V. Indhav, the cashier of Bank of India, outon Ex. Branch which may likely to result in financial loss to the Bank".

Out of the aforesaid 23 Account Payee chaques the workman white posted as Cashier in absence of regular Chief Cashier accepted the five chaques detailed in the charge sheet amounting to Rs. 49.89 lakhs and without crediting with those chaques in the Payee's Account discharged their payment by crediting into the third party account without obtaining any endorsement from the Payee's Account and also the Indemnity Bond. After investigation, Shri. S. Vivekanandan has given out the following capellasion vide report dt. 5-6-2001.

"The fact disclosed hereinabove would conclusively go to prove that Shri. V. M. Parkhe the Chief Cashier, Ex. Branch, Shri Sunil B. Jadhav and Officer Shri. D. U. Parmar were responsible for the present episode.

Since we apprehend that Mr. V. M. Parkhe (who had also came to adverse notice earlier for similar instances) may try to tamper the records, we recommend that necessary administrative action including suspension may be condisered.

Though there appears to be no actual beneficiaries of the cheques in question and the whereabouts of Mr. Sudhir B. Mandal the proprietor of M/s. Vijny Trading Co., is not known, the customs authorities may in future make a claim on the bank and as such there would be a huge loss to the bank due to the acts of the above staff and officer. However, there has been no claim made so far inspine of lapse of more than 3 years after the said incident".

11. Mr. S. Vivekanandas: *vide* report dt. 14-8-2001 vide para 12 reported in the following manner:

From the above facts, it is clear that Mr. V. M. Parkhe and Mr. Sunil B. Jadhav were responsible for accepting A/c Payer crossed cheques drawn on various parties in third party's account for collection. and there was no occasion for the officers to verify the above facts since the respective paying-in-slips were not being sent to the officers at the time of obtaining their signatures in the Outward Memos. None of the paying-in-slips contain the signature of any of these officers. The officers, in a routine course, only verify the total amount of the Outward Memowith the listing patties and sign the outward memos. already signed by the cashier in charge. Although the Outward Memos, now collected were signed by various officers as pointed out in Amexure B" we can safely presume that the cheques in question were sent for collection under the cover of the above Outward Memos,

We enclose the up dated Annexure "B" and copy of paying-in-slips dated 9-2-(998, 11-4-1998, 4-4-1998, 11-2-1998 and 27-5-1998 along with copies of outward memos indicated in the said annexure, for ready reference. The CBI investigation is still on and we are keeping in touch with Mr. S. S. Mandlik, the CBI I.O. and recently we have submitted the details of accounts connected with this case wherein the main accused. Shri Krishna Kumar Gupta is mostly involved.

12. The aforesaid reports were the basis of the enquiry against the workman. These reports were heavily relied upon by the Enquiry Officer. The evidence which was led before the Enquiry Officer was on the point of proving the documents. The workman never disputed the fact that he was posted as a temporary cashier in absence of the regular Chief Cashier and he accepted the cheques. The facts mentioned in the charge sheet are not in dispute. The

defence of the workman through out before the Enquiry Officer as well as in the instant reference is that there was practice in the Bank for the last 30 years to credit the account. payee cheques of a party to the account of the third party. This fact was clearly reflected by Shri, S. Vivekanandan in his reports and not denied by the Bank in particular. The workman was a temporary cashier. The cheques could not be cleared out without the knowledge and signature of the Officers since they were for the amount more than Rs. 50,000/-. The Officers of the Bank were left out deliberately and the poor workman was made victim just to save the Officers. The case of the Bank through out is that the cheques in question were issued by Customs. Authorities and were drawn on Reserve Bank of India. They were wrongly cleared in third Party Account without obtaining indemnity from the account holder and the account in which the cheques were collected were not the accounts of new customers of old standing. The new endorsement of the Account Payee was a must which was not obtained by the workman and thus he committed gross misconduct under clause 19.5 (j.) of the Bi-partite Settlement. Thus, the Bank was just in passing the final punishment. order vide Section 6(b) of the Bi-partite Settlement.

The finding of the Enquiry Officer equator be mid. to be perverse since there is no dispute about the facts. The workman through out admined facts which amounted to derelication of duty on the part of the workman who was posted as temporary Cashier on the fateful dates. His contention that there was a regular practice like this does. not appear to be without any basis. It is the admitted position that there was such practice which was duly followed by the workman as well as which fact is clear from the report of Shri. S. Vivekanandan, Similar position was reported by the Enquiry Officer in his report but still he placed the burden upon the workman in view of the circular dt. 16-12-1996 issued by the Bank. The workman tried to deny the knowledge of the circular but this is of no use. The workman was expected to know the circular of the Bank since he was working as a Cashier in the Bank. According to this circular the workman was expected to obtain endorsement from the holder of the cheques for credit into the third party and should have also obtained. Indemnity Bond. This requirement of the law was there just to protect the interest of the Bank so that the bolder of the cheque may not put any claim against the bank for wrongful encashment. It may be pointed out that no evidence is available on record about the strict implementation in practice by the aforesaid circular. However, I feel that non-adherence of the aforesaid circular on the part of the workman does not result in any loss to the Bank nor there is any possibility of any loss to the Bank since a period of about 10 years has already clapsed. and no claim whatsoever is being made as per admission. by the bank during the course of argument before me. In these back ground, it cannot be said that on account of gross negligence of the workman there was likelihood of any loss to the Bank. The act of the workman could be said

to be an act prejudicial to the interest of the Bank but its gravity is lowered down a lot in view of the fact that there was no loss not say likelihood of any loss to the Bank or to anybody. No doubt, the workman could be said to be guilty of gross misconduct for acting prejudicial to the interest of the Bank but its gravity is reduced a fet in view of the aforesaid fact. The Enquiry Officer did not consider this aspect of the matter and similar was the position with the Disciplinary Authority who failed to take into consideration the aforesaid act. The departmental appeal preferred by the workman also resulted in discussal without caring to see as to whether there was any loss or likelihood of any loss to the Bank. The Competent Authority was impressed by the fact that the cheques in question amounted to about Ra. 50 laths while there was no loss even of a single penny.

14. Besides the above, the responsibility of the Officers was not considered at all and they were left out for no reasons. The dereliction of duty on the part of the Branch Manager and the other Officers whose names have clearly come on record went un-punished at all. The cheques could not be cleared out without the signature of the Officer and this fact was not taken into consideration by the Disciplinary Authority. It appears that the westerian was panished to save the Officers of the Bank. The Enquiry Officer was asked specifically on this point to which he stated that he was just required to go into the charge sheet against the workman and not against other Officers. It was a natural reply for the Enquiry Officer. In fact this was the duty of the General Manager/Zonal Manager to look into the facts in a right perspective to bring to books all the guilty Officers including the workman. The thrusting of the responsibility upon the shoulder of the workman alone. is not justifiable. It amounts to discrimination which is not to be tolerated by the law. The Bank was not justified in punishing the workings with the Gual penalty of someval from service. No doebt, the workman could not be absolved. of the charge totally but a lesser pusishment would have been proper for the Competent Authority in the instant case.

15. Considering the entire record, I conclude that the charge of misconduct was proved against the workman but the punishment of ramoval from service cannot be said to be commensurate with the charge of misconduct. The market of justice would be served if the workman is available punishment under Section 6(e) i.e. the workman is brought down to one lower stage in the scale of pay. The punishment awayded to the notificate by the competent Authority is modified accordingly.

16. In view of the above, the punishment order is modified accordingly. The workman would not be entitled to back wages since there is no evidence on brhalf of the workman for his non-comployment and the workman was not disqualified for future employment by the Bank.

17. The reference is disposed of accordingly.

JUSTICE CHANSHYAM DASS, Presiding Officer.

नई दिल्लो, 88 **जुला**ई, 2007

का.मा. 2153,—औद्योगिक विवाद अधिनिक्स, 1947 (1947 कः 14) की बारा 17 के अनुकरण में, केन्द्रीय सरकार वनाईटेड कमर्लिक्ल मैंक के प्रबंधतंत्र के संबद्ध नियोककों और उनके कर्मकारी ^{हर का}प, अनुबंध में निर्दिष्ट औ**र्त्वाणक विवाद में केन्द्रोग सरका**र औद्योगिक अधिकरण⊬श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 1/2006) को प्रकाशिक करती है, जो केन्द्रीय सरकार को 17-7-2007 कि[•] ग्राप्त हुआ **या**।

> ं पं. एल=12011/9*\$/*2005=आ**ई अ**तर (**की**-π)]. राजिन्द्र कुमार, डेस्क अधिकारी

 † New Delhi, the 18th July, 2007

S.O. 1.353.—In Pursuance of Section 17 of the industrial Disputes Act, 1947 (14 of 1947), the Central Covernment hereby publishes the award (Ref. No. 1/2006) of the Central Government Industrial Tribunal cum-Labour Court, Kolkata as shown in the America in the Industrial Dispute between the management of United Commercial Bank and their workmen, received by the Central Conferences on 17-7-2007.

> [No. L-12011/95/2005-IR (B-11)] RAJINDER KUMAR, Desk Officer ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL THERWAL AT KOLKAYA

Reference No. 01 at 2006 PARTIES:

Employers to relation to the management of United Commercial Bank

AND

Their workmen PRESENT:

MR. JUSTICE C.P. MISHRA, Presiding Officer APPEARANCE:

On behalf of the Management : Mr. D.K. Parra, D.C.O.

of the Bank

On behalf of the Workmen : Mr. M. Bhowmick,

> Committee Member of West Bengal and Sikkin State Committee, UCD Bank Employees

Association

State Industry

West Bengal : Banking

Dated: 11th July, 2007. AWARD

By Oilder No. 1.-12011/95/2005-IR (B-II) dated 19-12-2005 and Corrigendum of even number dated 2-3-2006 the Central Government in exercise of its powers. under Section 10 (1)(d) and (2A) of the Industrial Disputes. Act. 1947 referred the following dispute to this Tribural for adjudication:

"Whether the action of the management of United Commercial Bank by not considering Sh. Ashis Kumar Das for promotion from subordinate cadre to Clerical cadre as per clause 4.6 (II) of promotion policy settlement is just and legal ? If not, what relief the workmen concerned is suittled to ?"

- When the case was called on 9-7-2007 none. appeared for either side. It appears from record that the representative of the workmen appeared before the Tribunal last on 9-8-2006 when he prayed for time to file statement of claims etc. in this case, but thereafter he did never appeared, not took any step whatsoever in the matter and the case was being adjourned from time to time giving them the opportunity to proceed with the matter. It is thus clear that the workmen are no longer interested to proceed with the matter.
- Since the workmen are not interested to proceed. in the present reference, this Tribunal has no other alternative but to dispose of the matter by passing a 'No-Dispute Award.
- 4. A 'No Dispute' Award is accordingly passed and the reference is disposed of.

Kolkata

Dared : 11th July : 2007

C. P. MISHRA, Presiding Officer नई दिल्ली, 18 जुलाई, 2007

का.आ. 2154.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्टल वैका ऑफ इंडिया के प्रवेधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के श्रीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायासय, अर्नाक्लम के पंचाट (संदर्भ संख्या **:36/2006) को प्रकाशित करती है, जो कोन्द्रीय सरकार को** 17·7-**2007 को प्राप्त हुआ था**।

> [सं. एक 12012/143/2002 आई आर (बॉ-II)] राजिन्द्र कमार, हेस्क अधिकारी

New Delhi, the 18th July, 2007.

2154.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the award (Ref. No. 136/ 2006) of the Central Government Industrial Tribunalcom-Labour Court, Emakulum as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Cours! Government on 17-7-2007.

> [No. I. 12012/143/2002-IR (B-U)] RAJINDER KLMAR, Desk Officer ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT ERNAKULAM

PRESENT:

SHRJ P.L. NORBERT, B.A., L.L.B., Presiding Officer (Wednesday the 11th day of July, 2007/ 20th Asadha, 1929)

L.D. 136 of 2006

(I. O. 79/2002 of Industrial Tribunal, Kotlam).

Workman .

Smt. K. Vijayalekshmj, TC No. 37/1745, S. P. Lane. Wesi Nada.

Thiruvananthapuram

Adv. Shri Manoj R. Narr

Мелерсицен

The Regional Manager... Central Bank of India. P. B. No. 98. Gapal Building, Thyvila Road.

Thi⊓tvattanthapuram

Adv. Shri V. V. Sadharthan

AWARD

This is a reference made by Central Government under Section 10(1)(d) of Industrial Disputes Act, 1947 for adjudication. The reference is:

"Whether the action of the management of the Central Bank of India in denying the corployment to Sint. K. Vijayalekshmi beyond 1997 is tegal and justified?? If not, what relief the said workman is entitled to?"

2. The facts of the case in a nutshell are as follows:

According to the worker, Ms. K. Vijayalekshmi she was engaged as a penn on a temporary basis in a regular post of Rishimangalam Branch of Central Bank of India in 1987. She worked as such continuously till 1997. Though she was eligible to be absorbed, the management terminated her service without following the procedure under lodustrial Disputes Act for termination. The case of another similarly situated employee was considered by Industrial Tribunal, Alapuzha and an award was passed directing bank to absorb him. The Branch Manager had informed the Regional Office that the worker had satisfied the eligibility criteria for absorption. Hence the management has to be directed to reinstate the worker and absorb her in service with remspective effect and pay all consequential benefits.

- 3 According to the management the worker was never engaged in bank, much less for a continuous period of 240 days or 12 calendar months in one year. The bank also denies that she was in bank service from 1987 to 1997. It is stated that she might have been a casual labourer (tea server) in stuff carreen. Which is not connected with bank. She has no right either for employment or for absorption in bank. The Branch Manager's recommendation, even if true, will not confer any right on the worker for absorption. A decision rendered by Industrial Tribunal. Kollam in another case cannot apply to claimant. The claim is liable to be rejected.
- In the light of the above contentions the following points arise for consideration:
 - (1) Was the worker employed in Bank?
 - (2) Is the termination legal?

The evidence consists of the oral testimony of WW I and documentary evidence of Exts. W I to 8 on the side of worker and MWI and Exts. M I & M2 on the side of management.

5. Point No. (1):

The worker claims to have worked in Rishmangalam. Branch of Central Bank of India as temporary peop in a regular post from 1987 to 1997 continuously. Bank denies employment of any kind. According to them she would have been a cusual worker in staff canteen which is not run. by bank. It is an independent arrangement by staff. This is the contention in the written statement and in evidence. To bring bome the contention of the worker there is only her testimony and documents Exts. W 1 and W5. Ext. W1 is a copy of a letter written by Manager of Thiruvananthapuram. Branch to Regional Manager, wherein it is stated that 3. workers of Thiruvananthapuram II Branch and the worker. of Rishimungalam Branch have attained the eligibility norms. for absorption. The document is challenged by the management. According to bank the Branch Manager, Thirdvananthapuram had no authority to recommend the दक्षक of the worker who claims to have worked in a different. branch. The letter, Ext. WI shows that the Branch Manager was recommending the case of temporary employees of Thiruvananthapuram Branch, Though it is written: "we also learn that Miss. Vijayalekshmi who is engaged on temporary basis at our Rishimangalam Branch has also attained the eligibility norms........". It is not known what was the authority of Branch Manager of Thiruvananthapuram Branch to recommend the case of another Branch. The letter was written on 23-8-1993. Exts. MI series are Muster rolls of officers and staff or Rishimangalam Branch for the period January, 1987 to December, 1997.

They show that Shri Neelakantan was the Manager from December, 1991 to January 1996. Since the worker wanted the Muster Roll of August, 1993 itself, later that was also procluced on 21-12-2004 by the management, but not score marked. That shows that Shri Neelakantan was the Branch Manager of Rishimangalam Branch in August, 1993 when Ext. W1 was written, But WW1 says that Ext. W1 is signed by Shri Sreenivasan and he was the Assistant Regional Manager, But Ext. W1 is signed by Branch Manager, Thiruvananthapuram and addressed to Regional Manager. There is no record to show that Shri Srconivasan was Assistant Regional Manager, If he had written in his capacity as Assistant Regional Manager, why has he signed as Branch. Manager and in the address of Third varianthaporam Branch? As per Ext. W2 series circulars issued by Regional Manager. the Branch Managers were advised to forward details of temporary employees who had completed 180 days, showing all particulars shown in the format, to the Regional Office. No such details of the worker is seen sent from Rishinangalam Branch to Regional Office. If at all the candidature of Miss. Vijayalekshini was to be recommended. it was to be done by Branch Manager of Rishimangalam. Branch and not by Branch Manager of Thiruvarianthaperam. No details are available with regard to age and qualification. of Miss. Vijavalekshmi to know whether she was cligible for selection to the post of peop. A mere recommendation cannot substitute eligibility criteria or confer a right on the caudidate. The selection process is to be done in the Regional Office. and it is for them to ascertain whether eligibility norms are satisfied. Fach Branch will have to furnish details to Regional. Office for determining the eligibility. That decision cannot be taken by a Branch Manager. Moreover the worker (WW1). says that Thiruvananthapuram Branch may not have her employment details and it is not the concern of Thiruvantan(bapuram Branch Manager to ascertain beremployment details and he campa know also.

- 6. Ext. W5 is a circular issued by union to its various units in which it is mentioned that five of temporary employees were chosen for the test for selection to the post of peon. One of the five is Miss. Vijayalekshmi. None of the office bearers of union is examined to test the correctness of the contents of Ext. W5. Therefore Ext. W5. a document of the union, cannot be taken as admission on the part of management regarding eligibility for selection as peop or temporary employment of Miss. Vijayalekshmi in bank.
- 7. No doubt daily wage Registers and P&L Registers for the period January to December. 1987 pertaining to casual workers were called for by the worker as per perition dated 23-11-2004. The manigement did not produce them, but filed an affidavit saying that they were not traceable and probably destroyed. It is avered in the affidavit that even as per RBI Rules, records need be preserved for a maximum period of 8 years only. It is mentioned in Ext. W 4

reply by Management to Assistant Labour Commissioner that normally miscellaneous records are kept only for a period of 5 years. The registers of the period of 1987 is asked for in the year 2004, after 17 years. Bank cannot be expected to preserve them so long. The industrial dispute itself was raised in 2002. How could the bank foresee the need for daily wager Registers of 1987 in a future ligigation of 2002. Naturally those registers in all probability would have been destroyed. The case of management is probable. Therefore no adverse inference can be drawn against the management for non-production of records.

8. Neither in pleadings not in evidence the management has admitted employment of worker in bank, let alone continuous employment. Payments to casual or temporary workers should have been made as per vouchers. They are not called for and even if called for, would not be available at this distance of tinse. No co-worker (any substant of bank) is examined to support worker's case. There are no records worth reliable to prove employment. Thus the worker has not been able to prove that she was employed (even if temporary or casual) in Rishimangalam Branch at any point of time.

Point Np. (2):

- 9. The worker says that she was working continuously for a period of ten years and at any rate she has worked continuously for 240 days of 12 calendar months in an year and therefore she cannot be sent away barehanded and the bank is bound to comply with \$-25F of 1 D. Act. She also claims that she is entirled to be absorbed.
- 10. I have already found that in the wake of denial by bank that she was an employee of bank it was necessary for the worker to prove the factum of employment and that she has failed in that attempt. It follows that there can be no evidence regarding continuous service for 180 days as mentioned in Ext. W2 series circulars regarding temporary employees or 240 days as required in S.25F read with S-25B (2) (a) (ii) of 1.D. Act to call the alleged termination, illegal. But for Ext. W 1, there is absolutely no evidence regarding employment and continuous service. I have already found why Ext. W 1 cannot be accepted as proof of employment or continuous service. For brevity repetition is avoided. The burden is on the worker to prove continuous service. There is a cutena of decisions on that aspect and suffice it to refer to a few of them:
 - Rajusthan State Ganganagar S. Mills Ltd. v. State of Rajusthan (2004) 8 SCC 161.
 - Municipal Corpn.Faridabad v. Siri Niiwas (2004) 8 SCC 195.
 - H. U.D.A. v. Jagmal Singh 2006- III-1, L.J., 152.
 - Yeilatti R.M. v. Assistant Executive Engineer. 2006-1-1-1-2,442.

It is needless to say that the worker has not discharged her burden of proving continuous service and employment itself. Exr. W3 award of Industrial Tribunal Alupuzha referred by the worker is regarding another temporary employee and was set aside by Hon'ble High Court by Ext. W6 jurigement and further considered in Writ Appeas judgement (Ext. W7) and temanded the matter to Industrial Tribunal. Thereafter the same Tribunal passed an award in favour of worker Shri V. Christopher. But again that award is under challenge before High Court and the

memorandum of W.P. is Ext. M2. Hence the award of Industrial Tribunal in that case cannot be taken into consideration in this case as it has not become final. Moreover the evidence in that case differs from this case.

- 11. The case of chamption does not arise in this case as the claimant has not been able to show that she was working in a permanent vacancy, even if she was a casual or temporary worker. Para 53 of Secretary State of Karnataka v. Umadevi (2006) 48CC. I has no bearing on the facts of the present case as she has not been able even to show that she is a 'workmap' within the definition of S-2(s) of LD. Act. Besides, the reference is regarding legality of termination and (cinstatement to the post that she claims to have held. But no right whatsoever has account to ber. Therefore she is neither entitled for reinstatement nor for any other relief.
- 12. In the light of the reasons stated above 1 find that the action of the management in denying employment to Smt. K. Vijayalekshmi is legal and justified and she is not entitled for any relief. No cost. The award will take effect one month after its publication in the Official Gazette

Dictated to the Personal Assistant transcribed and typed by her, corrected and passed by me on this the 1 tith day of July, 2007.

P. L. NORBERT, Presiding Officer

APPENDIX

Witness for the Worker:

WWI —Smt. K. Vijayalekshnii. 1(48-2004).

Witness for the Management:

MW1—Shri C.J. Dominic, 9-11-2004.

Exhibits for the Worker;

- W1—Copy of letter dated 23.8.1993 issued by the Br. Manager of Central Bank of India to the Regional Office.
- W2 series Circulars (5 Nos.) issued by Regional (1ffice of Central Bank or India.
- W3—Certified copy of award dated 19-7-2000 in 1 [) 9/98 of I. T., Alapuzha
- W4—Photostar copy of letter No.TRO:PRS: 2002-03 dated 29-5-2002 issued by Regional Office of Central Bank of India to ALC [C]
- WS.—Photostat-copy of strike notice-dated 13-8-1991 issued by General Secretary, Control Bank of India Employees' Union.
- W6—Certified copy of judgement dated 16-6-2004 in O.P. 30611/2000 of Hon ble HC of Kerala.
- W7 Certified copy of judgement dated 13-9-2004 in in W.A 1544/04 of Hon ble HC of Keraja.
- WR— Certified copy of judgement dated 7-9-2004 in WiA-1563/04 of Hon'ble HC of Kerala.

Exhibits for the Management;

- M. ? series—Certified copies of Musici Rolls of Central Bank of India (46 pages).
- M2—Copy of Mann(mandum of Writ Petition dated 20-6-2005 numbered as WP(Cy)|8525/05 before Hon'ble HC of Kerala.

नई दिल्ली, 18 जुलाई, 2007

का.अ. 2155.—औद्योगिक क्वियर अधिनयम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विजया कैंक के प्रवंशराय को संबद्ध निवोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अम न्यायालय, अनिकृत्स के पंचाट (संदर्भ संख्या 278/2006) को प्रकारित करती है, जो केन्द्रीय सरकार को 17 7-2007 को प्राप्त हुआ था।

(सं. एल-12012/111/95-आईआर (ची-11)) राजिन्द्र कुप्पर, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2155.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.278/2006) of the Central Government Industrial Tribuna) cum-Labour Court. Emakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Vijaya Bank and there workman, which was received by the Central Government on 17-7-2007.

(No. L-12012/111/95-IR (B-II)]

RAJINDER KUMAR, Desk Officer

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR COURT, ERNAKULAM

PRESENT:

Shri P.L. Norbert, B.A., L.E.R., Presiding Officer

(Tuesday the 3rd day of July, 2007, 12th Ashada 1929).

1.D. 278/2006

(LD. 12/1996 of Labour Court, Ernakulam)

Workman/Union

: The Joint Secretary Vijaya Bank Workers Organization 283, Pycrofts Road, Triplicane Chennai -5

Adv. C. Anil Kumar.

Management

. The Assistant General Manager Vijaya Bank, Head Office 41/2, M.Q. Road Bangalore -I

Adv. Shri C.P. Sudhukara Prasad

AWARD

This is a reference made by Central Government under Section 10 ($\hat{\Gamma}$) (d) of Industrial Disputes Act, 1947 for adjudication. The reference is :

"Whether the action of the management of Vijaya Bank, Bangalore in imposing the punishment of stoppage of two increments permanently on Shri P. Anil Kumar, Clerk vide their order dated 11-4-92 is legal and justified? If not, to what relief is the workman entitled?"

The facts of the case in brief are as follows :—

Shri P. Anil Kumar was a clerk of Vijaya Bank at Thirtivalla Branch. While so he was charge sheeted on the allegation that on 1-6-1990 he contrived with S/Shri T.S. Asholi Kumar and G.D. Nair (both clerks) in attempting to defraud Bank of Baroda, Thirty valla Branch to the tune of Rs. 1,30,000. He was suspended from service. An investigation was conducted by two senior officers of the bank. In pursuance to the investigation report, the management conducted a domestic enquiry. In the enquiry the workman was found guilty of the charge of acting prejudicial to the interest of the bank and three increments were stopped with cumulative effect. In appeal filed by the workman the finding of Enquiry Officer was confirmed, but the punishment was modified to stoppage of two increments. with comulative effect. Aggrieved by that an industrial dispute was raised by the workman through union and hence the reference.

According to the union, the Enquiry Officer had. violated the principles of natural justice, no proper opportunity was given to the workman to adduce evidence. and he was denied opportunity to cross-examine management witnesses. The Enquiry Officer relied on materials collected behind the back of the workman. The Enquiry Officer had adopted a partisan approach in the enquiry. There are no materials to find the guilt of the workman. The Enquiry Officer has not properly appreciated. the facts and evidence in the enquiry. The punishment imposed is shockingly disproportionate to the charges. There was inordinate delay if issuing charge-sheet to the workman. He was not allowed to peruse relevant documents. for submitting reply to the charges. The management was aware that the workman had no role in the incident. But the management wanted to implicate the workman. The Disciplinary Authority has not given personal hearing on the proposed punishment. The appeal was dismissed. without proper application of mind by the Appellate Authority. Hence the workman is entitled to be reinstated with all consequential henefits.

 According to the management the charge-sheeted. employee instead of submitting a reply to the charge-sheet requested to provide him certain documents without mentioning their relevance. There is no provision for supplying documents for the purpose of filing reply to charge-sheet. For the purpose of denying the charges it is not necessary to peruse documents. He was given sofficiem opportunity to defend himself in the enquiry. He was defended by a union representative. He was given opportunity to cross-examine management witnesses and to adduce defence evidence. However he produced only one document which was marked and he himself gave statement. The Disciplinary Authority had given the workman opportunity to make submission on the proposed. punishment. However the workman made a written. submission. But he did not turn up for personal hearing. The Enquiry Officer on the basis of the materials on record came to a conflusion that the workman was guilty of the charge of acting prejudicial to the interest of the bank and hence the Disciplinary Authority imposed punishment of stoppage of three increments with cumulative effect. The Appellate Authority on proper appreciation of the facts and evidence recorded by the Enquiry Officer, concurred with the findings of the Enquiry Officer, However taking into consideration the rotality of the circumstances the punishment was reduced to stoppage of two increments. with cumulative effect. The punishment is proportionate to the gravity of the offence. The attempt to defraud a banking institution cannot be treated lightly. It will have demoralizing offect on other employees of the bank and affects the reputation of the bank. No interference in the matter of punishment or findings, is called for.

- 5. In the light of the above contentions the following points arise for consideration :
 - (1) Whether the finding is sustainable?
- (2) Whether the punishment is proportionate to the misconduct? ¹

The evidence consists of the oral testimony of Enquiry Officer (MWI) and documentary evidence of Exts. MI to M9 on the side of management. It appears that when evidence was adduced before the State Labour Court the enquiry file (Bxt. MI) did not contain all the documents marked by the Enquiry Officer during enquiry. Hence Exts. M2 to 9 documents were produced in the Labour Court as additional documents and they were marked.

6. Point No. (1):

Shri P. Anil Kumar, the workman in this case, entered service of Vijaya Bank, Thiruvalla Branch

on 15-6-1989 and he worked there till 6-9-1990. The charge is:

"The action of the CSE in retaining the chequaleaf No. 484240 illegally, passing it on 10 Sri Ashok Kumar, clerk knowingly for depositing the same in the clearing on 1-6-90 by filling in the cheque for Rs. 1.30,000 after forging the signature of the account holder and thereby facilitated the perpetration of the attempted fraud by Sri F.S. Ashok Kumar, clerk on Bank of Baroda, Tiruvalla branch are acts prejudicial to the interest of the bank, constituting gross mis-conduct under sub-clause (J) of clause 19.5 of Chapter XIX of the Bipartite Septement, 1966."

The proceedings of enquiry, Ext. M2 reveals that though the enquiry officer had decided to commence the enquiry on 8-S-1991, the workman had sought an adjournment on the ground that the Defence Representative (Joint Secretary) of the Union) was away in Madras. The enquiry was adjourned to 10-5-1991. Again the workman sought adjournment on the ground that DK was unwell. Hence the enquiry was again adjourned to (0-8-1991). The enquiry was conducted on that day and on 12-8-1991. Pour witnesses were examined and 14 documents were marked as Exts. M 1 to M 14 on the side of management. On the defence side the workman himself gave evidence and one document was marked as Ext. D 1. All the management witnesses were criss examined by the Defence Representative. The proceedings sheets also reveal that copies of focuments relied on by the management were given on time to the workman. Thus the Enquiry Officer. had complied with the principles of natural justice. The contention of the union that adequate opportunity was not given for defence evidence and for cross-examination. of management witnesses, is not correct. So also the contention of the union that copies of documents were not furnished to the workman, is equally incorrect. Though these contentions were taken up in the claim. statement when the matter came up for hearing the union did not insist for consideration of the validity of enquiry as a preliminary issue. Hence it is sufficient to say that the Enquiry Officer had followed the procedure for domestic enquiry and complied with the principles of natural justice.

7. The incident alleged happed at Thiruvalla Branch of Vijaya Bank. A cheque book having one cheque leaf of Bank of Baroda. Thiruvalla Branch and belonging to Shri G. Radhakrishnan was forgotten and left in the counter of Thiruvalla Branch of Vijaya Bank, while he had been to Vijaya Bank on 15-6-1989 to deposit a cheque of a co-employee of National Insurance Company where he was

working. He came to know of the loss of the cheque leaf only up 1.6.1990 when Bank of Baroda informed him that his cheque was presented for encashment of Rs. 1,30,000 on 1-6-1990. On the same day he was called to Vijaya Bank by the Branch Manager to ascenain the facts. Thereafter be had given list. MS statement to the investigating officers of Vijaya Baok. He says in Ext. M5 that he had been to Vijaya Bank, Thiruvalla Branch on 15-6-1989 with chaque No.747450 for Rs.2767 ps. 01 drawn on Bank of Baroda of Thirtuvalla Branch for crediting to the S/B account of Smt. B. Kamalakshiamma with Vijaya Bank, Thiruvalla Branch. At that time he had by oversight left a cheque book having one cheque leaf in the counter of Vijaya Bank. He had not noticed the mistake until he was informed by Bunk of Baroda on 1-6-1990 that someone had presented his cheque for encashment of Rs. 1,30,000.

Ext. M4 is investigation report of two senior officers, one of whom was examined as MW I before the Empuiry Officer. The investigation report confirms the fact that Shri G. Radhakrishnan had been to the Vijaya Bank on 15-6-1989 for the purpose of depositing a cheque for collection and he had left a cheque leaf in the counter of Vijaya Bank. The reports also says that the cheque leaf came to the possession of the workman who was the clerk in the clearing section on 15-6-1989. The cheque was filled up showing the workman as drawee and signature of customer larged by a co-employee of workman. Shri Asbok Kumar and sent it hack to the workman through a sub-stall (Shri John Varghese) on 1-6-1990. The workman after perusing the cheque sent it to clearing section through the same sub-staff. Shri D.G. Nair was the clerk in clearing section on 1-6-1990. He sent it for collection to Bank of Baroda. The cheque was returned as the signature of the customer was found forged. MWII, one of the investigating officers reports that the workman was in the clearing section on 15-6-1989 when Shri G. Radhakrishnan bad approached the bank for depositing the cheque. The details of that cheque of Smt. B. Kamalakshiamma was entered in the clearing register and clearing scrolt of Vijaya Bank, Throvalla Branch by the workman. When the workman gave evidence on the defence side he admitted that he was in the clearing section on 15-6-1989. But he decies having any role in the incident or having come in possession of the obeque to question. MW2 is the Branch Manager of Vijaya Bank. He came to icrow of the alleged transaction after the incident. MW3 is JND Collector of Vijaya Bank, Shri John Varghese. According to him on 1-6-1990 Shm T.S. Asbok Kuntar had handed over a cheque to him to be entrusted to the workman. Shri Anil Kumar. He handed over the cheque to Shri Anil Kumar, After 10 minutes Shri Anil Kumar told him. to give the cheque to clearing section. He obeyed the instruction and placed it in the clearing section where Shri D.G. Nam was the clearing clerk. But at that moment Shri D.G. Nair was not in the seat. It is relevant to note that the incriminating statements of MW3 were not challenged in cross-examination of witness. The cross examination was on some other aspects. Just one question was put to the witness regarding incriminating circumstances and that was, whether MW3 had heard Shri Anil Kumar insisting Shri D.G. Nair to send the cheque for collection. The statement of MW3 that Shri Ashok Kumar had scot the cheque through MW3 to workman and after 10 minutes the workman had sent the cheque through MW3 to the clearing section is not questioned by the defence. It tantamounts to admission on the part of the defence. It was argued by the learned counsel for the union that the management was foisting a false case against the workman. However the union was not able to allege any motive on the part of either the Branch Manager or MW3 for implicating the workman in the incident. The allegation that MW3 is an obedient servant of the Branch Manager becomes irrelevant when the defence has nothing to say about the motive of MW2 or MW3 to incriminate the workman. The union has no case that either Branch Manager or the sub-staff (MW3) has any ill-will towards workman or enmity with him. When there is allegation and evidence regarding the role of Shri Ashok Kumar in the incident it was not necessary for the management to incriminate the workman. MW 4 is the Assistant Branch Manager of Vijaya Bank, Thiruvalla branch. According to him he came to know about the fraudulent transaction around 12 45 p.m. on 1-6-1990 when he received a call from Bank of Baroda. He says that the pay-in-slip of cheque for Rs. 2767 ps. 01 dated 15-6-1989 deposited by Shri G. Radhakrishnan is signed by him. That means Shri G. Radhakrishnan had been to bank to deposit a cheque for Rs. 2767.04 on 15-6-1989. It is true that the Enquiry Officer has found that there is no evidence to show that the workman had taken the disputed cheque (Ext. M8) from the counter of clearing section on 15-6-1989. However the Enquiry Officer found that the cheque was handed over to the workman by Shri Ashok Kumar through MW3 and it was returned to clearing section by the workman through MW3. On the same day the clearing clerk, D.G. Nair had forwarded the cheque for collection to Bank of Baroda. Thus the evidence and circumstance in the enquiry reveal that Shri G. Radhakrishnan had been to bank on 15-6-1989 and he had by mistake left a cheque leaf in the counter. That came into the hands of one of the employees of the bank which was utilized for presenting it and trying to encash an amount of Rs. 1.30,000. The attempt to encash the amount failed as the Bank of Barada on verification of signature refused to clear the cheque and returned it. It was submitted by the learned counsel for the union that the management as well as employees of bank were aware that it was only a joke of the staff of the bank and not intended to defraud anyone. The cheque of the customer

is not a toy for the staff to play. Had there been sufficient amount in the customer's account and had the clearing clerk of Bank of Baroda by mistake had not verified the signature, the cheque would have been cleared and the transaction would have assumed serious proportions. The bank employees who know well the value of a cheque and the consequences in case of loss of a cheque by a customer, cannot be licard to say that they were playing a joke with a blank cheque of a customer. Flad it been a joke they would have seen that the cheque was not sent for collection to another back, Having sent it for elearance to another bank. and having found it unsuccessful, they now turn round and say that is was a joke. But so far as the customer is concerned it is not a joke. The workman cannot escape the that that he was aware that he was the drawer of the cheque, no doubt written by a co-employee. But when it reached non he should have stopped the obeque and would have retained it with him either for returning it to the customer or to Bank of Baroda or for entrusting it to his own bank manager. On the other hand it was given to the clearing section for collection. The fact that signature was put by Sani Ashok Kumar without trying to imitate the signature of costomer Shri G. Radhakrishnan, will not lessen the gravity of the misconduct of the workman for having sent it for collection with all the false entries and knowing them to be false.

9 In the light of the above circumstances the findings of the linquiry Officer that the workman was aware of the disputed transaction and instead of retaining it, he had sent the cheque knowing it to be not genuine, to the chearing section for collection, do not call for any interference

10. Point No. (2):

The punishment imposed by the Disciplinary Authority is stoppage of 3 increments with cumulative effect. This was reduced to stoppage of 2 increments with correlative effect by the Appellate Authority. According to the union the punishment is shockingly disproportionate to the gravity of the charge. The misconduct proved is a major missionilust failting within Clause 19.5 (j) of 1st Bipartic Settlement. The punishment for gross misconduct is provided in Clause 19.6 of the Bipartite Settlement. It is the discretion of the management to impose any of the penishments under clause 19.6. The punishment being not one falling \$45 H-A of Industrial Disputes Act it is not for this court to interfere with. The position is supported by the decision in ladian Aluminium Co. Ltd. v. Labour Court. Ranchi 1991 —I-L., 3 328 at 333 (Pat D.B.). Hence no alteration in the matter of punishment can be made by this court. Besides, the punishment cannot be said to be disproportionate to the misconduct.

11. In the result, an award is passed finding that action of the management of Vijaya Bank in imposing the punishment of stoppage of two increments with cumulative effect on Shri P. Anil Kumar, Clerk vide their order dated 11-4-92, is legal and justified. The workman is not entitled for any relief. No cost. The award will take effect one month after its publication in the official Gazette.

(Dictated to the Personal Assistant, transcribed and typed by her corrected and passed by me on this the 3rd day of July, 2007).

P.L. NORBERT, Presiding Officer

APPENDIX

Witness fot the Workman/Union:

Nil.

Witness for the Management:

MW1-

Exhibits for the Workman/Union;

NiL

Exhibits for the Management.

MI -- Domestic enquity file.

M2 Proceedings of Enquiry.

M3 Statement of JND Collector given to Branch Manager on 4-6-1900.

M4 — Investigating Report (Pages 1 to 30).

M5— Annexone 1 Statement of Shri G, Radhakrishnan before investigating afficers on 15-6-1990.

M6-- Statement of Shri Sivarakakrishnan, Assat. Branch Manager submitted to investigating officers on 16 6 1990.

M7- Statement of Shri K.M. Mathew, Branch Manager before investigating officers on 16-6-1990.

M8 Chrque dated 1-6-1990.

M9-- Return memo of cheque dated 1.6-1990.

नई दिस्सी, 18 असई, 2007

का,आ. 2356,—औस्त्रीणिक विवाद अधिनिका, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसंध में निर्दिष्ट औसोरिक सिवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अब न्यायालय मं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/112/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-2007 की प्राप्त हुआ था।

> [सं. एल-12012/75/2001-आई आर (बी-II)] एजिन्द्र कुसार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2156.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/112/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Mumbai as shown in the Appeare in the Industrial Dispute between the employer in relation the management of Dena Bank, and their workman, which was received by the Central Government on 16-7-2007.

(No. L. (2012/75/2001-IR (B-II)) RAIINDER KUMAR, Desk Öfficer ANNEXLIRE

REFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT A.A. Lad, Presiding Officer

Reference No. CG/T-2/112 of 2005 (Old Ref. CG/T-2/63 of 2001)

Employers in relation to the Management of Dena Bank

The Regional Manager,

Dena Bank

Dena Corporate Centre,

Personnel Department

C-10, B-Block, Bandra Kurla Complex.

Bandra (E)

Mumbai-400 05 E

AND

Their Workmen

Mr. Satishkumar S. Nirankari

C-5, Satsang Bharati Society.

Govind Nagar, Malad (E)

Mumbai-400 097.

APPEARANCES

For the Employer

Ms. Nandini Menon

Advocate

For the Workmen

Ms. Kunda N. Samani

Advocate

Mumbai, dated 5th June, 2007

AWARD

The Govsernment of India, Ministry of Labour, by as order No.1.-12012/75/2001 [IR (B.I)] dated 2/8-5-2001 in exercise of the powers conferred by clause (d) of subsection (i) and sub-section 2(A) of Section 10 of the lodustrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Dena Bank, Mumbai in terminating the services of Shri

- Satishkumar S. Nirankari, Sub-staff w.e.f. 31-5-1999 and non-regularisation in Bank's service in Sub-staff cadre is legal and justified? If not, what relief the workman, Sh. Satishkumar S. Nirankari is critified?
- Claim Statement is filed by concerned workman at Ex-6 justifying the demand made by him regarding his termination dated 31-5-1999.
- 3. Saio is challenged by the first party by filing reply Ex-12 justifying its action of termination challenged in the reference.
- 4. Issues are framed at Ex-14 and Award was passed by my predecessor on 9-5-2002 which was challenged before Houble Bombay High Court Houble Bombay High Court by order dated 12-7-2005 disposed of Writ Petition No. 2579 of 2002 and sent matter back to this Tribunal for considering the date of entitlement of second party for confirmation in the employment.
- 5. Meanwhile Union by purshis Ex. 47 Informed that concerned workman is taken in the employment as per the order of Hoo'ble High Court and as such second party does not want to proceed with the reference. Hence the order:

Order

Vide Ex-47 this reference is disposed of.

Dated 5-6-2007

A.A. LAD, Presiding Officer

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2,

Reference No. CGTI-2/112 of 2005 (Old Ref. CGTI-2/63 of 2001)

Between

Dena Bank.......First Party

and

S.S. Nirankari.....Second Party

MAY IT PLEASE THE HONBLE TRIBUNAL

The Second Party workman, through the Advocate, had addressed a letter to the Advocate for the First Party, inquiring whether the case could by settled and if the workman could be regularised in the services of the 1st Party w.e.f. 2-5-2001 (date of reference of dispute to this Hop'ble Tribunal);

By a letter dated 12-4-2007, the first party informed their Advocate that the Bank was agreeable in principal to regularise the services of the 2nd party w.c.f. 2001 (2-5-2001). A copy of the Bank's letter dated 12-4-2007 is annexed hereto.

An order may be passed accordingly.

Mumbai

Sd/-

5-6-2007

(Advocate for the 1st Party)

Order

Sd/-

It is prayed by both & admitted by 2nd party

(Advocate for the 2nd Party)

Sa/-

workman. So it is disposed (S. Nirankari) Workman of accordingly.

SdJ

(A.A. Lad)

Presiding Officer

5-6-07

नई दिल्ली, 18 **जुलाई**, 2007

का.आ. 2157.—औद्योगिक विकाद अधिनियम, 1947 (1947 की 14) की धारा 37 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रवंधतंत्र का संबद्ध नियोजकों उत्तर उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण केनई के पंचाट (संदर्भ संख्या 258/2004) को प्रकाशित कारती है, जो जेन्द्रीय सरकार को 18-7-2007 को प्राप्त हुआ था .

> [सं. एल-12012/445/1998-आई आर (दी T)] अनय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2157.—In Pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 258/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Amexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 18-7-2007.

(No. 1.-12012/445/1998-IR (B-I)) AJAY KUMAR, Desk Officer ANNEXURE

BEFORE THE CENTRAL GOVT, INDUSTRIAL TREBUNAL ADMINISTRIAL TREBUNAL ADMINISTRIAL COURT, CHENNAL

Wednesday, the 31st January, 2007

Present: K. Jayaraman (Presiding Officer)
INDUSTRIAL DISPUTE No. 258/2004

[Principal Labour Court CGID No.201/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Sri M. Velayutham

I Party/Petitioner

AND

The Assistant General Manager,

State Bank of India.

Z.O. Chennai.

II Partyl Management

APPEARANCE:

For the Petitioner

Sn V.S.Lkambaram,

Authorised representative.

For the Management :

M/s. K.Vecramani.

Advocates

AWARD

The Central Government, Ministry of Lahour vide Order No.1,-12012/445/98-JR(B-1) dated 10-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its fife as CGID No.201/99 and issued notices to both parties. Even though both sides entered appearance the I Party has not filed Claim Statement and be has not appeared before the Principal Labour Court. After the constitution of this CGIT-Cum-Labour Court, the said

dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No.258/2004 and issued notices to both parties. In spite of adjourning the case for several hearings, the Petitioner was called obsent and set ex-parte.

2 The Schedule mentioned in that order is as follows.—

"Whether the demand of the workman Shri M.Velay wham, wait list No.698 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment.

State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?

On behalf of the Respondent memo of objection/. Counter Statement was filed, wherein it is atteged that reference made by the Govt, for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/ absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped. from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bons fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down, in seniority. Due to the business exigency, the Respondent/Bank engaged the temperary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-14-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of contribution proceedings and minutes were drawn under Section 18(3) of 1.0). Act, in terms thereof, the Peritioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary. couplayees and the Petitioner was wait listed as candidate. No. 698 in waitlist of Zonal Office, Chennai. So (ar 357 wait listed temporary candidates, out of 744 wantlisted temporary employees were permanently appointed by Respondent/Bank It is false to allege that the Potitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process. in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn amund, and claim. appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement. employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous. block of 36 calendar months and under category (C) the

temporary employees who have completed 30 days. aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31.3.97 (or filling upvacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 698 he was not appointed. The said settlements were honatirle which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is fiable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements. and operated throughout the country. The Tamil Naduhidustrial Establishment (Conferment of Permanent Status) to Workman) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Peritione: was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As persettlements, vacancies upto 31-12-94 were filled up against the waite list of temporary employees and vacancies for 1995-96 lsas to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized. and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- 4 In these circumstances, the points for my consideration are:
- (i) "Whether the demand of the Petitioner in-Wait List No. 698 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Peritioner is emitted?"

Point No. 1:

5. When the marrer was taken up for enquiry, it is reported by the special representative of the Petitioner that he has no instruction from the Petitioner and he is not appearing for the Petitioner and hence, the Petitioner was called absent and set expurte. Since the Petitioner neither appeared before this Court our filed the Claim Statement to substantiate his claim, I find the Petitioner is not interested in pursuing this dispute and hence, he is not entitled to any relief. No Costs.

6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January,, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 18 जुलाई, 2007

कर.क. 2158,—वीद्योगिक विकट अधिनियम, 1947 (1947 का 14) की धार 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंग्डिया के प्रशंकतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसंध में निर्देश्य औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 99/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार की 18-7-2007 को प्राप्त हुआ था।

[सं एल-12012/303/1998-आई आर (बी-I)] अबय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2158.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the award (Ref. No. 99/2004) of the Central Government Industrial Tribunal-cum-Labour Court. Chemia as shown in the Annexure in the Industrial Dispute between the management of State Bank of India, and their workmen, received by the Central Government on 18-7-2007.

[No, I./12012/303/1998-TR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL COVERNMENT INDUSTRIAL CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT:

K. Jayaraman, Presiding Officer

Industrial Dispute No. 99/2004

(Principal Labour Court CGIT No. 42/99)

(in the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

Between:

M.Manivel (deceased) : 1Party/Petitioner

And

The Assistant General Manager, : Il Party/Management State Bank of India, Region-I, Trichy.

Арреалике:

For the Petitioner: Sri V.S. Ekambaram,

Authorised Representative

For the Management: M/s. V. Sundar Anandan,

Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/303/98-IR(B-1) dated 2-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chemeai and the said Labour Court has taken the dispute on its file as CGID No. 42/99 and issued notices to both parties. But, the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 99/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

-2 . The Schedule mentioned in that $\mathrm{order}(i_{S},a_{S})$ follows .

"Whether the demand of the workman Shri M.Manivel, wait list No.337 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified?" If so, to what relief the said workman is entitled?"

3 The allegations of the Petitioner in the Claim Statement are beieffy as follows:

The Peririoner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed an temporary basis in Kattur ADB branch from 2-1-88. The Petitioner was orally informed that his services. were no mare required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petitinn filed by State Bank Employees' Union in Writ Petition No. \$42/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter filed a copy of settlement under section 18(1) reached between management of State Bank or India and All India State Bank of India Staff Federation. and the settlement is with regard to absorption of Class ${
m IV}$ temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen. under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted has application in the prescribed format through Branch Manager of the Kanur ADB branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class TV employee. From 2-1-88 the Petitioner has been werking as a temporary messenger and some times performing work in other branches also. While

working on temporary basis in Trichy branch, another the advertisement by Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner (railly on 31-3-97 that his services are not required any more and be need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conditation ended in failure, the matter was referred to this Tribunal for adjudication

4 As against this, the Respondent in its Counter Statement alleged that reference made by the Government. for adjudication by this Tribunal isself is not insintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Pesitiones was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of 1D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not benefite and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in sensitify. Due to the business extremely, the Respondent/ Bank engaged the temporary employees performance of duties as messenger and such engagements were provailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was expoused by State Bank of India Staff. Federation which resulted in five settlements dated 37-11-87, 16-7-88, 7-10-82, 9-1-91 and 30-7-96. The said selllements became subject mutter of concidiation proceedings and minutes were drawn under section 18(3). of LD. Act. In terms thereof, the Petalioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was woit fisted as candidate No. 337 in, wait list. of Zonal Office, Trichy So for 212 wait listed temporary candidates, out of 652 was listed temporary employees were permanently appointed by Respondent/Bank. It is faise to allege that the Pesirioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when a grose. When the Potitioner having submined to selection process in terms of settlements draws as per retrenchment provisions referred to above. cannot two scound and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as $\mathbf{A}_s \mathbf{B}$ and C. Considering their temporary service and subject to other eligibility criteria, under caregory (A) the temporary employees who were engaged for 240 days were to be considered and under cotegory (B) the temporary employees who have completed 270 days aggregate. temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees: who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days

aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for senionity in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed caudidates, 212 temporary employees were appointed and since the Petitioner was want listed at 337 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level scrilements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisaliction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temperary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages. easual inbour. Further, for circle of Chennal wait fist of daily wages was not finalized and honce not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria Set out by Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner us he has acquired the valuable right cushaned in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Politioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petirioner prays that an award may be passed in his favour.

- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of Respondent/Bank. Even in the Writ Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7 In these circumstances, the points for my consideration are: \pm
 - (i) "Whether the demand of the Peritioner in Wait List No. 337 for restoring the wart list of temporary messengers in the Respondent/Hank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No.1 & 2:-

- 8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner disd and it is posted for taking steps. But, the LRs of the Petitioner bave not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.
- 9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for consequential appointment thereon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Petitioner have no personal right to claim employment in the Respondent/Management. I find even in the event of reference being answered in favour of the deceased Petitioner, this petition cannot be allowed. Therefore, I find the claim is abatted and thus, it is dismissed but without any casts.
 - Thus the reference is disposed of accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 18 **जुलाई**, 2007

का.आ. 2159.— श्रीह्योगिक विवाद अधिनियम. 1947 (१९४१) का 14) को धारा १२ के अनुसरण में, केन्द्रीय सरकार स्टेट वैंक ऑफ इंडिया के प्रश्नेधरों) के संबद्ध नियंजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिश्त औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंनाई के पंचाट (संदर्भ संख्या 74/2004) को प्रकाशित करती है, अ) केन्द्रीय सरकार को 18-07-2007 को प्राप्त हुआ था।

[d, एल-12012/107/1998-आई, अप. (बी-1)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007

S.O. 2159.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2004) of the Central Govt, Industrial Tribunal com-Labour Court. Chemial as shown in the Annexure in the Industrial Dispute Is: gween the Management of State Bank of India and their workmen, received by the Central Government on 18 (17 20).

¡No. I.-10212/107/1998-JR (B-D) AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 74/2004

rl†meipal Labour Court CGED No. 161/99]

(in the cratter of the dispute for adjudication under clause (ii) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Manageoriest of State Bank of India and their workmen)

BETWEEN

Sri A. Mony

] Parry/Petitioner

AND

The Assistant General Manager, : Il Party/Management State Bank of Judia, Z.O.

Madurzi.

APPEARANCE

Met the Petitioner.

Sn V.S. Ekambarum.

Authorised Representative.

For the Management

Mr. D. Mukundas, Advocates

AWARD

The Control Government, Ministry of Labour vide Order No. 1., 12012/107/98-IR(B-f) dated 05-02-1999 has referred this dispute earlier to the Tamil Nado Principal Labour Control Chemia and the said Labour Court has taked the dispute on its file as CGID No. 161AM and issued notices to both parties. Both sides emerced appearance and siled their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum-Labour Count, the said dispute has been transferred to this Tribunal for Adjudication and this Tribunal has numbered it as 1.0. No pageon.

2. The Schedule mentioned in that order is as collows

"Whether the demarks of the workman Shri A. Mony, wait list No. 375 for restoring the wait list of temperary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified." If we to what rehefine said workman is entitled."

 The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsured by Employment Exchange for the post of sub-staff in Class 47 cadre in State Bank of India and he was given appointment as messenger after un interview and medical examination. He was appointed on temporary basis at Kuzhithurai branch from 16-03-1984. The Pentioner was smally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Count in the form of Writ Peritioner Island by State Bank Employees' Union in Writ Petition No. 542/37 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Pederation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely $A,\,B$ and $C,\,$ Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kuzhithurai braisch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was inturned orally to join at the branch where he mittally worked as a class IV employee. From \$6.03 1984, the Pentioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kurhithurai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Peritioner was working as such, the Manager of the branch informed the Petitioner orally no 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner taised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Potitioner requested the Respondent/Bank to continue to engage him in service as brained prior to 31-3-97 and to regularise him in service in Jue course. The Respondent/Bank took up an anreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement montioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing bim in regular service is unjust and illegal. Further, the semberments are repugnant to Section 25G & 25H of the LD. Act. The remination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fanctes. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unitar labour practice. The wait list suffers scrious promotest and it is not based on strict seniority and without any resionale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent in its Counter Statement alleged that reference made by the Government for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section (8(!) and (8(3) of 1.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior mutive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India

Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. in terms thereof, the Petititoner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Peritioner was wait listed as candidate No. 375 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary calibidates, out of 492 waitlisted temporary employees week permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it mose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temperary employees who have completed 30 days aggregate temperary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous black of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for sensority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait fisted candidates, 219 temperary employees were appointed and since the Petitioner was wait listed at 375 he was not appointed. The said settlements were bonsfide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and bis claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upon 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chemnai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these teasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Pentioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for ap-pointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right onshraned in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect than under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed worktnen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner fitted a rejninder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff, Federation were under Section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under cudified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are—
 - (i) "Whether the demand of the Petitioner in Wast List No. 375 for restoring the wait list of temporary

messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger's justified?"

(ii) "To what relief the Peritioner is entitled?"

Point Nos. 1 & 2 ;-

- 8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is that appearing for the Pentioner and the Petitioner also has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set expand.
- 9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1984 and worked as a temporary messenger and during the year 1986-87 he was disengaged from service and again he was engaged. as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice. of compensation. Since he has continuously worked for there than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the t.D. Art. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Embunal to substantiate his claim. As such, I find the allegations of the Petitioner are not established before this Tribunal, Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
- 10. Thus, the reference is disposed of accordingly. (District to the P.A. transcolled and typed by him corrected and pronounced by mo in the open court on this day the Mar January, 2007.)

K. JAYARAMAN, Presiding Officer

ਸਤੇ ਵਿਲਗੇ, IN ਮੁਗਤੇ, 2007।

का,जा. 2160.— औश्लीत्क विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, के दीय मरकार सेन्ट्ल रेलले के प्रवंधतंत्र के शंबद्ध नियोजकों और उनके कंमेकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में के दीय सरकार औद्योगिक अधिकरण सं 11 मुख्यई के पंचाट (सर्दर्भ संख्या 86/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-7-2007 को प्राप्त हुआ था .

> िर्ध एल-७:011/14/2001-आई आर (बीन्स्)] अज्य कुंमार, डेस्क अधिकारी

New Delhi, the 18th July, 2007.

S.O. 2160 — In parsuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the Award (Ref. No. 86/2001) of the Central Govt. Industrial Tribsmal-cum-Labour Court-II. Mumbai as shown in the Annexuse in the Industrial Dispute between the Management of Central Railway and their workmen, received by the Central Government on 18-07 (XO7).

(No. L-43917/4/2001 IR (B-b) AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNALNO.2, MUMBAL PRESPNT

A. A. LAD, Presiding Officer

Reference No. CG1T-2/86 of 2001

Employers in relation to the Management of Central Railway, Mumbai

The Chief Workshop Manager Central Railway Parel, Mumbui-400 012.

AND

Their Workmen

The Secretary, Indian Railway Technical Staff Association

3. Mahavir Yaday Chawl

Gundawali Hill, Nagardas Road, Andheri (E). Mumbai-400 069.

APPEARANCES

For the Employer

: Mr. D.G. Dhougade

Representative

For the Workmen

: Mr. A.B. Mishra Representative

Mumbai, Dated 26th April, 2007.

AWARD

The Government of India, Ministry of Labour by its Order No. L-41011/14/2001/IR/(B-I) did. 20-06-2001 in exercise of the powers conferred by clause (d) of subsection (1) and sub-section 2(A) of Section 10 of the industrial Disputes Act. 1947 have referred the following dispute to tais Tribunal for adjudication:

"Whether the action of the management of the Chief Workshop Manager, Central Railway, Parel in not paying the wages for 2 days i.e. on 21-09-99 and 22-(9)-09 in respect of around 4000 workers is justified? If not, what relief the workmen are entitled?"

- 2. Claim statement is filed by the Representative of the workmen at Ex-8 stating that, the workmen involved in the reference—have been denied their wages by Management of 21-09-1999 of Second shift of general shift and wages of first and second half on 21-01-99, Management also denied wages of these workmen of all shifts of 22-09-99 without any reason or without holding enquiry or without obtaining explanation from the concerned workmen.
- On those days, these workmen were on duty. The principle followed by management of 'no work no pay' in not giving wages of above dates and period has no logic.
- 4. These workmen are mainly engaged in maintenance and repair of kicomotives of various types. Their activities are carried out in shift round the clock, 95% of them are of labourer category working with Parel Workshop.
- According to Second Party, on 21-09-99 all these workmen joined in their respective duties in general shift at about 10.30 hrs. Some unknown persons entered in to the

workshop and stopped work at these workmen. The members of management were available in relevant time but nobody enquired who were those persons and why they stopped work. Even same thing took place on 22-09-99. Since Management did not interfered or protect the workmen by calling security staff or police, some took shelter inside the workshop and some left workplace just to protect themselves from these goonday who entered unauthorisedly and without knowledge of these workmen. As a result of that, these workmen unable to punch their entry card vis-a-vis mark their presence. Even they unable to attend their regular work and without considering atl that, management one sided decided to deduct the wages of the workmen of above dates and shifts by applying principle of 'no work no pay'. So it is prayed that, First party he directed to pay the wages of these 4000 workmen. of Parel workshop and set aside impugned action of the first party with necessary reliefs.

- This is objected by first party by filling reply at Fx. 90 stating that, since these 4000 workmen did not work out those relevant periods on those dates, they are not entitled to wages of those days and period. Without any reason. they stopped work. Since there was no work, principle Mtoo work no pay! was followed by management regarding: above period. When there was no work, the workmen involved are not entitled to wages of that period. It is alleged that, member of first party did not turn up on 21-09-99 and 22-09-99. Even they did not punch their card. Even they did not aprily in advance for absentism and intimuted their absence. Their act rather supports the said trespassers and without their belp, trespassers cannot enter the workshop and disturb the working of First party. There is: no provision to appoint security for the workers or callpolice for protection when 4000 workmen who were there. What is the necessity to have protection to them? Infact. these workmen consented the activities of the trespassers. allowed them to do it and enjoyed the said disturbance by remaining absent from duty or by not doing work. So it is: submitted that, decision taken by it of not giving wages of these days involved in the reference was just proper and does not require any inserference.
- In view of above pleading my Ld. Predecessor framed issues at Ex. 21 which I answer as follows:

Lynes

Findings

- Whether the action of the management of the Chief Workshop Manager, Central Railway, Parel in not paying the wages for two days i.e. on 21-09-99 and 22-09-99 in respect of around 4000 workers is justified.
- What relief the workmen are entitled to?.

Does not survive

REASONS

lasacs Nos. 1 & 2 :

 By raising dispute of non-payment of wages of 21st Sept. 1999 and 22nd Sept. 1999 of about 4000 workmen. by the first party. Second party made out case that, these workmen were not responsible for not doing work since sufficient protection was not given by management nor any of the management's person protected these workmen and guided them in that situation. Whereas stand of the first party is that, these workmen were responsible for that entire scene which occurred on those days. Even most of them were absent. Who were present did not work. They did not work on those days in the above period and it was just and proper to apply principle of 'no work no pay'.

9. To support that Second party examined B. M. Shukla by filing affidavit at Ex-22. Against that no evidence led by first party. Written arguments are submitted by second party at Ex. 35 with some citations and by first party at Ex. 36.

The evidence available of Shukla for second party. is concerned, filled at Ex-2, will find be state that, on 21-09-99 tie learnt that fact on telephone regarding serious. unrest in Paret Workshop on account of interruption of trespassers and when he reached there he met officer of Association as well as visited workshop along with the officers of first party. He noted that, there was fear on the face of the workmen due to terror created by unknown. persons. He also noted that, punching booth was closed and there was no atmosphere of normal nature. He noted that, management's persons were not present. He noted that, agitations were going on mainty on entrance gate and they were preventing staff to enter into workshop. Even he noted same position on 22-09-99. According to him, workmen are not responsible for that. It is suggested that, there is no access to the oursiders in the workshop. It was also suggested that, workmen purposely remained absent on 21st and 22nd September, 1999 and did not work.

11. From this evidence it is clear that, none of the concerned workmen is examined by the second party to bring real picture on record. It is alleged that, there was tense atmosphere and some trespassers entered in the workshop and created terror. It is to be noted that, about, 4000 workpren were there, it is not pointed out how, some of the persons can enter and create tense atmosphere when 4000 workers were present. It is matter of record that, all these werd of labour category. When labourers are which were in swength of about 4000 and when it is not proved that, there is no easy access to the outsiders question. arise how few people can command over situation against 4000 workers? No just and proper explanation is given by second party by leading evidence. They admit that, punching machine was not working and workmen did not work or attend their work. It means that, there was no work. on those days during the above period and even it is not case of second party. When there was no work and when no just and proper explanation came from second party, when there were in all strength of about 4000, question arises how much they can be believed?

The case made out by them that, no management person came there, advised them, in my considered view

that does not arise, as mostly they were workers strength of 4000. Some of them may be supervisor and some of them may be of different category working there. Fact is that, there was no work on those days

12. The question is raised by the second party questioning the action of the first party saying that. without holding enquiry or enquiring with the workmen. how action is sustainable? In my considered view in peculiar circumstance which occurred in two days and that to in particular period of those two days how invite. management to question \$11,4000 and enquire with them. and then take action? According to me, it was not feasible. as well as possible. It is matter of record that, about 4000 workmen were working in that said workshop. It was period. of two days. Work was not done on those two days. No any other serious action of discipline was taken. So action taken of stopping wages of those days if taken in that scenario, I am of the view that, it was just and proper. It is: not case of the second party that, partiality was shown by first party and some were paid on those days and some were not, it is not case that, some favour was shown to some employees and harsh and extreme action was taken. by the first party against some group.

First party simply did not pay wages of those days for which they did not work and it was made applicable to all who were on roll on those days.

Number of cutations referred by second party i.e. copy of order passed in civil appeal. No. 5047 of 1998. Citation published in 1990 (IV) SCC 744, & Citation published in AIR. 1967 SC 1269 as well as citation published. in 1994 SCC (L. & S) page (320, Citation published in 1980. SCC (L & S) page 145, are on different footing. In civil appeal of 5047 of 1998, where there was the question of granting special leave and other privileges and it was under consideration. In case of Bank of India V/s. Kelevala and Ors. (1990 IV SCC page 744) there was point of non-payment. of wages though workmen were present on work. In our case most of the workmen were absent on those days and that point is not disputed by second party. The citation of Bhagwan Shukla Vs. Union of India published in 1994 SCC. (L & S) (230 is also on different fonting as in that case.) there was a question of payment of probation which was wrungly fixed.

14. If we consider all these coupled with decision taken by first party, which was taken in general without making any discrimination and partiality, which was universe against all pertaining to that period, I am of the view that, said action does not require any interference. So I answer the above issues to that effect and passes following order:—

ORDER

Reference is rejected with no order as to costs.

Date: 26-04-2007

A. A. LAD, Presiding Officer

गई दिल्ली, 19 जुलाई, 2007

कर,आ, 2161,—औत्ओंगक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रसंपतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुषहाटों के मंचाट (संदर्भ संख्या 11/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-400: 2/98/2005-आई आर (डोय्)]

सुरेन्द्र सिंह टेस्क अधिकारी

New Dethi, the 19th July, 2007

S.O. 2161.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the award (Ref. No.1172006) of the Central Government Industrial Tribunal-com (about Court, Gowahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

|No.L-40012/98/2005-IR (DU)| SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT TRIBUNAL-CUM-LABOUR COURT, GUWAHATL ASSAM. PRESENT

Shri H.A. Huzarika, Presiding Officer, CGIT-cum-Labour Court. Gewahati.

Reference Case No. 11 of 2006 In the matter of an Industrial Dispute between:—

The Management of BSNL, Silchar

Vice

Tazir Workatan Sri Kulendra Sinha.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate For the Management : Mr. D. Sur, Advocate.

Date of Award: 06-07-2007

AWARD

The Government of India, Ministry of Labour, New Dethi, vide its order No. L-40012/98/2005-IR (DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL. Silchar, and their Workman, Sri Kulendra Sinha to adjudicate and to puss an swand on the strength of powers conferred by Clause(d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDLLE

"Whether the demand of Shri Kulendra Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

- On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 11/2006 as per Procedure.
- 3. The case of the workman Sri Kulendra Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Duily Rated Mazdur and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retreached him without assigning any reason and no opportunity was given to him at the time of retreachment. The retreachment was illegal, arbitrary, unjustified and had in law. He received no retreachment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no beed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petioton is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoon in the Telecommunication Department and the payment has been made on AGC-17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution be is entitled for security of service and promotion and wolfers.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNI, employee. That the Casual Labourer or Daily Wagers and temporary employee cumot be terminated without any reason assigning to them.
- 10. That the workman claims that he is entitled to have benefits u/s 25-G, 25-H of the 1.D. Act. 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularize the Applicant labourer.
- 12. That the DOT. New Delhi vide No. 269-4/93-STN II (PT) dated 12-02-1999 the authority of all DOT Officers

for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual fabourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNI, attended the contiliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management peayed to dismiss the claim of the alleged workman.

- 14. I have carefully gone through the documents submitted by both the parties. The Workman Sri Kulendra Sinha remained absent on the date fixed for evidence and addaced no evidence and the evidence of the Management. recorded my parte. The reason behind is that the learned Advocate Mr. M.K. Jain refused to represent the workman. The evidence of the Management witness Sri Bijon Behari-Nath is recorded expurre who has categorically stated that he does not know the workman. The Management witness is declined to be cross examined by the Adoveate Mr. M.K. Jain. Advocate for the workman who was present as the time of recording the evidence of the Management. For ends of justice, on careful scrutiny of the documents in the record I find the workman has not called any document. to prove that he was engaged by the Management as easual. labourer. What I find there is not acceptable evidence for the weakream to accept him as easual Jabourer under BSML. The workman is not emitted for any relief. What I find the asieged workman Sri Kulendra Sinha is not entitled for any terief. In the result, the claim of the alleged workman Sri Kurendra Sinha is reported,
- Propore the Award and send a to the authority accuracy as per procedure confidentially and immediately.

H A HAZARLKA, Presiding Officer

नइ दिल्ली, १५ जुलाई, ३००१

का.ओ. 2162.— आँद्योगिक विलाद अधिनियम, 1947 (1947) को उन्तर की बारा 17 को अनुसरण में, केन्द्रीय मरकार दूर श्रीवार कियान के प्रवधनंत्र के सबद्ध नियोजकों और उनके कर्मकरण के बेच, अनुवध में निर्देश ओद्योगिक विलाद में केन्द्रीय सरकार औद्योगिक अधिकरण अम क्यायालय भूताहारों के मंचाट (संदर्भ संख्या 10/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्रपा हुटन है।

सि. एल 40012/97/2005-आई आर (क्षे पू)) सुरेन्द्र कुमार, इंस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2162.— In pursuance of Section 17 of the Incustrizi Disputes Act. 1947 (44 of 1947), the Central Government hereby publishes the award (Ref. No 10/2006) of the Central Government industrial Tribunal-cum-Labour Court. Government as shown in the Amexure in the Industrial Propose between the employers in relation to the management of Telecom Department and their workman.

which was received by the Central Government on 19.7-2007.

[No. L-40012/97/2005-IR (OU)] SURENDRA SINGH, Desk Officer ANNEXTIRE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CHIM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT

Nimi II.A Hazarika. Presiding Officer. CGIT-com-Labour Court. Gowahata.

Reference Case No. 10 of 2006

In the matter of an Industrial Dispute between:-

The Management of BSNI , Silehar

 $\mathbf{V}_{\mathcal{B}_{n}}$

Their Workman Sci Chandro Sekhar Sinha.

APPEARANCES

For the Workman : Mr. M.K. Jain, Advocate For the Management : Mr. D. Sur, Advocate.

Date of Award: 06-07-2007.

AWARD

i. The Government of India, Ministry of Labour, New Delhi, vide its order No.1.-40012A97/2005-IR (DAI) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL. Siletian, and their Workman. Sri Chandra Sekhur Sinha to adjusticate and to pass an award on the strength of powers conferred by Clausetd) of Sub-Section (1) and Sub-Section (2A) of Section (0 of the Industrial Dispute Act, (947/14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demond of San Chindra Sekhar Sinha for reinstatement of his services with the management of BSNL. Silchar, SSA is legal and justified? If so, to what relief the workman is emitted and from which date?"

- On being appeared by both the purpose the proceeding is proceeded here for disposal being Nombered 10/2006 as per Procedure
- 3. The case of the workman Sri Chandra Sekhar Sinha in brief that he was in Department of Telecommunication under RSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment, The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retrenchment Notice in writing and in heu of Notice the justified amount was not paid to the workman.

- 4. That the workman produced the working days list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority; Government of India, New Deihi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is basined the engagement/employment of Casual lebourer from 1988. But the petitioner/claimant was working as daily wage Mazzloor in the Telecommunication Department and the payment has been made on AGC-17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from this claim.
- That under Articles 38 of the Constitution be is entitled for security of service and promotion and weffare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and Temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is entitled to have benefit u/s, 25-G, 25-H of the 1.D. Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 15 The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delinivide No. 269-4/93-STN II (Ft) dated 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Acronius Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNI, strended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and regument about all the points against the workman.

Under the circumstances the Management prayed to nismissthe claim of the alleged workman.

14. On careful scruting of the evidence I find the workman. Sri Chandra Sekhar Sinha claimed that he was engaged as Casual Labourer for 240 days in a year and as such, he is entitled for regularization and to acquire the status of Casual Labourer. In Support of his contention he submitted a document Ext. A wherein it is reflected that he worked for 578 days only in 3 years. That document as he said is received from one Namar Ali countersigned by one Sub-Divisional Officer, Phones, Silchar Sub-Division, Butto prove this document he has not called original document. such as, Attendance Register, Payment register, Etc. This document is not authentic on the ground that it has got onissue No. from the Office. This can not be said document. issued on official duty. This must be proved with official record and as per procedure. Admittedly he has deposed in in his cross-examination that he was assured for regularization but he is not regularized by the BSNL. But there is no appointment letter or any other document that he has acquired the status of a casual labourer to get benefit. under the Scheme of Status of Casual Labourer which poes like this:

"5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

Further I find the matter is inordinately delayed and as per Annexure-VI submitted by the Management as the matter is time barred. The Management witness Lachman Lal Rhar deposed that the workman is not the workman of RSNL. On scrutiny I find the workman Sri Chandra Sekhar Sinha entirely failed to show that he worked as casual labourer unde the BSNL to get benefit under the Scheme. In the result, I find the alleged workman Sri Chandra Sekhar Sinha is not entitled to for any relief. In the result, the claim of the workman Sri Chandra Sekhar Sinha is not entitled to for any relief. In the result, the claim of the workman Sri Chandra Sekhar Sinha is rejected.

 Prepare the award and send it to the authority concerned as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का. आ. 2163.— औरहेंगिक विवाद अधिवियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विचाग को प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय गुवाहाटों के पंचाट (संदर्भ संख्या 9/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

(सं एए 400) 296/2005 आई आर (डोयू) | सुरेन्द्र कुमार, डेस्क ऑपकारी

New Dolhi, the 19th July, 2007.

S.O. 2163.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 9/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Government as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19 7-2007.

 $[N_0.I./40012/96/2005\text{-}IR\,(\mathrm{DL})]$

SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT

Shri H.A. Hagarika, Presiding Officer, CGIT-cum Labour Court, Guwahati.

Reference Case No. 09 of 2006.

In the matter of an Inclustrial Dispute between:---

The Management of BSNL, Silchar.

Vis

Their Worketan Sri Nurut Amin Laskar.

APPEARANCES

For the Workman

Mr. M.K. Jain, Advocate

For the Management :

Mr. D. Sur Advocate.

Date of Award: 6-7-07.

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/96/2005-IR (DU) referred this bidustrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sn Nurul Amin Laskar to adjudicate and to pass, an award on the strength of powers conferred by Chase(d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Nurul Amin Laskar for reinstalement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

- 2. On being appeared by both the parties the proceeding is proceeded here for disposal being Numbered 9/2006 as per Procedure.
- The case of the workman Sri Nurul Amin Laskar in brief that he was in department of Telecommunication.

under SBNI, and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Net work of SBNL for the installation work and maintenance of the development work. But the SBNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, impustitled and had in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

- 4. That the workman produced the working days list before the authority but the authority paid no heed in it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNI, authority, Government of India, New Delhi wide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdour in the Telecommunication Department and the payment has been made on AGC-17.
- 6 That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delha introduced a Scheme for regularization of Cusual Labourers under the grant of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claims.
- That under Articles 38 of the Constitution he is entitled for security of service and promotion and wetfare.
- 9. Under the present discumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is entitled to have benefit u/s 25-G, 25-I] of the L.D. Act. 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delhi vide No. 269-4/93 STN II (Pt) 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all

Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contact basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.

13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Hoder the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. On careful scrutiny of the evidence I find the workman Sri Nurul Amin Laskar claimed that he was engaged us Casual Labourer for 240 days in a year and as such, he is entitled for regularization and to acquire the stams of Casual Labourer. In Support of his contention he submitted a document Ext. A wherein it is reflected that he worked for 393 days only in 3 years. That document as he aid is received from one Namar Ali countersigned by one Sub-Divisional Officer, Phones, Silcher Sub-Division, But to prove this document he has not called any original doucment such as, Attendance Register, Psyment register. are. This doucment is not authentic on the ground that if has got no issue No. from the Officer. This can not be said document issued on official duty. This must be proved with official record and as per procedure. Admittedly be has deposed in his cross-examination that he was assured for regularization but he is not regularized by the BSNL. But there is no appointment letter or any other document that he has acquired the status of a casual labourer to get benefit maler the Scheme of Status of Casual Labourer which goes like this:

13. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

Further I find the matter is inordinately delayed and as per Armexure-VI submitted by the Management as the matter is time barred. The Management witness Lachman Lat Bhar deposed that the workman is not the workman of BSNL. On screainty I find the workman Sri Nurul Armin Laskar entirely falied to show that he worked as casual labourer under the BSNL to get benefit under the Scheme. In the result, I find the afleged workman Sri Nurul Amin Laskar is not entirled to for any relief. In the result, the claim of the workman Sri Nurul Amin Laskar is rejected.

15. Prepare the award and send it to the authority concerned as per procedure confidentially and immediately.

H.A. HAZARIKA, Presiding Officer

र्मा दिल्ली, १९ भूलाई, 2007

कर् अह. 2164.— बौद्धांगिक विवाद अधिनियम, 1947 (1947 को 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रवधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में भिर्देष्ट औश्लीगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/धाम न्यायालय, गुक्हाटी के पंचाट (संदर्भ संख्या 8/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त इस्त था।

> (सं एल-400) 2/95/2005-आई आर (डीय्)] सुरेन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2164.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Gowahati as abown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No.1, 40012/95/2005-FR (DU)] SURFNDRA SINCH, Desk Officer

ANNEXLIKE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TREBUNAL CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H.A. Hazarika, Presiding Officer, CGTI-cum-Labour Court. Gurashati

Reference Case No. 66 of 2006

In the matter of an Industrial Dispute between:— The Management of BSNL, Sikhar

Vrs.

Their Workman Sri Gopal Singh

APPEARANCES:

For the Workman :

Mr. M.K. Jain, Advocate

For the Management :

Mr. D. Sur, Advocate.

Date of Award : 05-07-07

AWARD

1. The Government of India, Ministry of Labour. New Delhi, vide its order No. L-40012/95/2005 IR (DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman. Sri Gonal Sinha to adjudicate and to pass

as award on the strength of powers conferred by Clause(d) of sub-section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947(14 of 1947) on the hasts of the following Schedule.

SCHEDULE

"Whether the demand of Shri Gopal Sinha for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? It so, to what relief the workman is entitled and from which date."

- On being appeared by both the parties the proceeding aspraceeded here for disposal being Numbered 08/2006 as per Procedure.
- 5. The case of the workman Sri Copal Sinham brief that he was in department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Network of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The actrenchment was Elegal, athatrary, unjustified and bad in law, He received no actrenchment Notice in writing and in lieu of Notice the fusition appount was not paid to the workman.
- 4. That the workman produced the working days had before the authority but the authority paid no head to it and the Department of Telecommunication introduced a Schame let regularization of Casual Labours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time burned as he regularly kept contact with the actionate corregularization.
- 5. That the BSN1, authority, Government of India, New Delhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is hanned the engagement employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC+17.
- 6. That for many many year the peritionarie annual continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub Inspector (phose) Mr. Namar Ali submitted to Labout Germissional.
- 7. That the Department of Telecommunication. New Dethi introduced a Scheme for regularization of Casual Labourers under the grapt of Temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Articles 38 of the Constitution be is artifled for security of service and promotion and welfare.

- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is entitled to have benefit U/s 25-G. 25-H of the L.D. Agr, 1947.

Under the circumstances the we doman prayed to pass order to suinstate him and regularize him with back wages

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL DOT. The BSNL has no liability an regularized the Applicant lebourer.
- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourers is withdrawn. That the departmental development works are done through the centractor on contact basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSML anended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alloged workman.

- I have carefully gone through the documents submitted by both the parties. The Workman Gopal Sinha ramained absent on the lists fixed for availance and addition no evidence and the evidence of the Management recorded. exparts. The reason behind is that the learnest Advacate Mr. M.K. Jain relused to represent the workman. The civdence of the Management witness Sri Bijon Behari Nathis reconsised exparts who has categorically stated that he dies not know the wickman. The Management witness is declined to cross examined by the Advocate Mr. M.K. Jain, Advocate for the workman who was present at the time of recording the evidence of the Management. Fire ends of justice, or careful sensing of the documents in the record I find the workener has not gailed any document to grove that he was engaged by the Management as easing labourer. What I find there is not acceptable evidence for the workman to accept him as easied tabourer and to BSN1... The workman is not entitled for any relief. What I find the allegad warkman Sri Gopal Sinha is not entitled for any relief. In the result, the claim of the alleged workman Gepar Sinha is rejected.
- Prepare the Award and send it to the authority concerned as per proceedure confidentialsy and immediately

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जलाई, 2007.

का,आ, 2165.--औद्योगिक विवाद अधिनियम, 1947 (1947 का :4) की शहा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार कियान के प्रबंधतंत्र के संबद्ध नियोक्कों और उनके कर्पकारों के क्षेत्र, अनुबंध में निर्दिष्ट औद्योगिक विकार में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहाटी के पेनाट (संदर्भ संख्या 7/2006) को प्रकाशित करती है. जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ वा !

> [सं एल-400(2/94/2005-आईअर(डीयू)] सरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2165.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7/2006). of the Central Government Industrial Tribusal-cum-Labour Court, Guwahati as shown in the Annexure in the Industrial Dispute between the management of Telecom Department and their workman. Which was received by the Central Government on 19-7-2007.

[No.1.40012/94/2005-IR (DU)]

SURENDRA SINGH, Desk Officer

ANNEXAME

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT. **GUWAHATI, ASSAM**

PRESENT

Shri H. A. HAZARIKA, Presiding Officer CGIT-com-Labour Court, Guvelati Ref. Case No. 7 of 2006

In the matter of an Industrial Dispute between :-The Management of BSNL, Silchar

Vis.

Their Workman Sri Monimoy Sinha

APPEARANCES

For the Workman

: Mr. M. K. Jain, Advocate.

For the Management.

: Mr. D. Sur, Advocate

Dated of Award 5-7-07

AWARD

 The Government of India, Ministry of Labour, New Delhi, vide jus order No. L-40012/94/2005-ER(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSML. Silchar and their Workman, Sri Monimoy Sinha to adjudicate and to pass an sward on the strength of powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

- "Whether the demand of Shri Monimoy Sinha for reinstatement of his services with the management of HSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date 🏋
- On being appeared by both the parties the proceeding is proceeded here for disposal being numbere J 7/2006 as per Procedure.
- The case of the workman Sri Monimoy Stobe in: brief that he was in Department of Telecommunicate. under BSML and worked against the Post of Master Roll and Daily Rated Mazdoor and he worked for the development of Net work of BSNL for the installation work and maintenance of the development work. But the BSM. retremeded him without assigning any reason and no opportunity was given to bim at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad. in law. He received no retreachment Notice in writing and in lieu of Notices of justified amount was not paid to the workerser-
- 4. That the workman produced the working days list before the authority but the authority paid no beed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was too. regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSML authority, Government of India. New Delhi vide letter No. 269/10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- That for many many years the petitioner claimant. continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Amar Ali submitted to Labour Commissiones.
- That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary status and rgularzation Scheme of DOT 1989 who worked 240 days to a year. But authority deprived him from his claim.
- 8. That under Article 38 of the Constitution lie is entitled for security of service and promotion and welfare.
- Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

 That the workman claim that he is entitled to have benefit w/s 25-G, 25-H of the I.D. Act. 1947.

Under the circumstances the workman prayed to pass order to rejustate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never workert in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT New Delhi vide No. 269-4/93-STN II (Pt.) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the management prayed to dismiss the claim of the alleged workman.

- On careful scrutiny of the evidence I find the workman Sri Monimoy Sinha claimed that he was engaged as Casual I abouter for 240 days in a year and as such, he is entitled for regularization and to acquire the status of Casual Labourer. In Support of his contention he submitted a document Eq. A wherein it is reflected that he worked for 470 days only in 3 years. That document as he said is received fripm one Narendra Ch. Malakar countersigned by one Sub-Divisional Officer, Phones, Silchar Sub-Division. Hut to prove this document he has not called any original document such as, Attendance Register, Payment Register, e.c. This document is not authentic on the ground. that it has got no issue No. from the Office. This can not be said document issued on official duty. This must be proved with official record and as per procedure. Admittedly he has deposed in his cross-examination that he was assured. to: fust 15 years for regularization but he is not regularized. by the BSNL. But there is no appointment letter or any ether ducument that he has acquired the status of a casua! labourer to get benefit under the Scheme of Status of Casuai. Labourer which goes like this:
 - 75. Temporary Status.
 - 5) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which the must have been engaged on work for a period of 240 days (206 days in the casual fabourers will) be designated as Temporary Mazdnor."

Further I find the matter is inordinately delayed and as per A enexure VI submitted by the Management as the

matter is time barred. The Management witness Lachman Lai Bhar deposed that the workman is not the workman of BSNL. On scrutiny I find the workman Sri Monimoy Sinha entirely failed to show that he worked as casual labourer under the BSNL to get benefit under the Scheme. In the result, I find the aliged workman Sri Monimoy Sinha is not entitled to for any relief. In the result the claim of the workman Sri Monimoy Sinha is rejected.

 Prepare the award and send in to the authority concerned as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिस्सी, 19 जुलाई, 2007

का,आ. 2166.—अंद्रोगिक विवाद अधिनियम, 1947 (1947) को 14) को धार 17 के अनुस्तरण में, केन्द्रीय सरकार दूर संधार विभाग के प्रबंधरंत्र के ध्वद्ध निर्धाककों और उनके अमंकारों के बोच, अनुबंध में विदिध औद्योगिक विवाद में केन्द्रीय सरकार अवद्योगिक अधिकरण/श्रम न्यावालय, गुवाहाटी के बंचाट (संदर्भ संख्या 6/20/6) को प्रकाशित करती है, जो जेन्द्रीय मंगकार को 19-7-20/07 को प्राप्त हुआ था।

[सं. एतः २००12/93/2005-आई आर(डॉव्)] मुरेद् सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2166.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the award (Ref. No. 6/2006) of the Central Government Industrial Tribunal-cum-Labour Court. Government is shown in the Amexine in the Industrial Dispute between the employers in relation to the imanagement of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

[No. L-40012/93/2005 IR (DU)] SURENDRA SINGH, Desk Officer ANNEXURE:

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT. GUWAHATI,ASSAM

PRESENT

Shri H.A. Hazarika, Presiding Officer CGIT-cum-Labour Court, Guwahati Ref. Case No. 6 of 2006

In the matter of an Industrial Dispute between:
The Management of BSNL, Silchar
Ves.

Their Workman Sri Babui Ahmed Laskar APPEARANCEN

For the Workman

: Mr. M:K. Jain. Advocate.

For the Management

: Mr. D. San. Advocate

Date of Award 5-7-07

AWAED

1. The Government of India, Ministry of Labour, New Delhi, vide its Order No. L-40012/93/2005-IR(DU) referred this Industrial Dispute arese between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Babul Ahmed Laskar to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHMILLE

"Whether the denamed of Shri Babul Ahmed Laskar for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

- On being appeared by both the parties the proceedings is proceeded here for disposal being numbered 6/2006 as per procedure.
- 3. The case of the workman Sri Babul Ahmed Laskar, in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL tetrenched him without assigning any reason and no opportunity was given to bim at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and had in law. He received no retrenchment Notice in writing and in lieu of Notices of justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no hand to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Dalhi vide letter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Cassal labourer from 1988. But the petitioner/claimant was working as daily wage Mazdoov in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for manymany years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mt. Namar All submitted to Labour Commissioner.
- That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual

Labourers under the grant of temporary status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.

- That under Articles 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is entitled to have benefit n/s 25-G, 25-H of the I.D.Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt.) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-Affidavit filed by the workman Sri Bahol Ahmed Lashkar. He claimed that he was engaged as casual labourer for 240 days in a year and as per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieu. of notice. That his case is not time barred as he approached the management from time to time for relief and the management assured bim to regularize or to provide relief but I have not found that the workman worked continuously for 240 days in a year to got relief under the scheme. No original documents were called, no attendance Register is called to prove his claim. A certificate is given by the workman in which it is reflected that he worked in 1992— 128 days, in 1993-238 days. This document is also not proved as per procedure. No Office issue No. is given and as it is a document related to financial matter it must be proved by calling the related financial documents. Further I find there is no evidence of creation of Post of Casual Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to

prove his claim. Further he is not within the Scheme as under:

5 Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."

I this found that the case is time barred as per Annexure-VI of the Management.

- 15. It is pertinent to note here that Sri Lachmal I all Bhar who is Sub-Divisional Engineer, Vigilance, BSNL. Silchar categorically stated that he does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.
- 16. Under the above facts and circumstances what I find the atleged workman Sri Babul Ahmed Laskar is not entitled for any relief and his claim is rejected.
- Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का.आ. \$167.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, क्षेन्द्रीय सरकार दूर संचार विभाग के प्रबंधांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बांच, अनुबंध में मिदिंब्द औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अन नोमालय, गुवाहाटी के पंचाट (मंदर्ग संख्या 5/2006) को प्रकाशित कराँगि है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था:

> ं [सं एल-40012/86/2005-आईआर(डी.यू.)] धुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government Industrial Tribunal complete Court, Government Industrial Tribunal complete Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

(No L-40012/86/2005-IR (DU)) SURENDRA SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H.A. HAZARIKA, Presiding Officer CGIT-curs-Labour Court, Guwahati Ref. Case No. 5 of 2006

In the matter of an Industrial Dispute between .—
The Management of BSNL, Silchar

 $V_{\rm FS}$

Their Workman Sri Ashok Kumar Paul.

APPEARANCES

For the Workman

: Mr. M.K. Jain, Advocate.

For the Management

: Mr. D. Sur. Advocate

Dated of Award 5-7-07

AWARD

1. The Government of ladia, Ministry of labour. New Delhi, vide its order No. L. 4001 2/66/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Ashok Kumar Paul to adjudicate and to poss an award on the strength of powers conferred by Clause (d) of Sub-section (i) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (b) of 1947) on the basis of the following Schedale.

SCHEDULE

"Whether the demand of Shri Ashok Kumar Paul for reinstatement of his services with the management of BSNL, Silchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date. ?"

- 2. On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 05/2006 as per Procedure.
- 3. The case of the workman Sri Ashok Kumar Paul in brief that he was in department of Telecommunication under BSNI, and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of Net work of BSNI for the installation work and maintenance of the development work. But the BSNI researched him without assigning any reason and no opportunity was given to him at the time of retreachment. The retrenchment was allegal, arbitrary, unjustified and bad in law, He received no retreachment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no head to it.

and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.

- 5. That the HSNL authority, Government of India, New Delhi vide letter No.269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual Labourer from 1988, But the Petitioner/Claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-haspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Dethi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution be is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- That the workman claim that he is entitled to have benefit u/s 25-G, 25-H of the J.D.Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or Imployment in BSNL, DOT. The BSNL has no liability to regularized the . Applicant labourer.
- 12. That the DOT, New Delhi wide No. 269-4/93-STN II (Pt) dated 12-2-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the deputmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- That the Management of BSNL attended the conciliation meeting held by the Assistant Labour

Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-Affidavit filed by the workman Sri Ashok Kumar Paul. He claimed that he was engaged as casual labourer for 240 days in a year and as . per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieuof notice. That his case is not time barred as he approached. the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the workman worked continuously for 240 days in a year to get relief under the Scheme. No original dosements were called, no aneadance Register is called to prove his claim. A Certificate is given by the workman in which it is reflected that he worked in 1989-207. days; in 1990-206 days in 1991-230 days. This document is: also not proved as per procedure. No Office issue No. is gives and as it is a document related to financial matter it. must be proved by calling the related financial documents. Purther I find there is an evidence of creation of Post of Casnal Labourer, There is no evidence of engagement or appointment letter. No attendance Register is called to prove his claim. Further he is not within the Scheme as muler:

"5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

I also found that the case is time barred as per Amexure-VI of the Management.

- 15. It is pertinent to note here that Sri Lachmal Lal Bhar who is Sub-Divisional Engineer, Vigilance, BSNL, Silchar categorically stated that he does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.
- 16. Under the above facts and circumstances what I find the alleged workman Sri Ashok Kumar Paul is not entitled for any relief and his claim is rejected.
- Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई पिल्ली, 19 जुलाई, 2007

कर.का. | 2168.—और्कोनक कियाद श्रीवनियम, 1947 (1947 का 14) की 🛊ए 17 के अनुसरन में, केन्द्रीय सरकार दूर संचार विष्यम के प्रविकास के संबद्ध निवोधकों और अनके कर्मकारों के बीच, अनुबंध में निर्देश्ट औद्योगिक विकाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अभ नेपायालय, गुलकाटी के पंचाट (संदर्भ संख्या: 4/2006) को प्रकाशित कांग्री है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ या ।

> [स. प्ल-40012/85/2005 - आजिस्(स्टीयु] सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 4/2006). of the Central Government Industrial Tribunal-cum-Labour Court, Guwalluti as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

> [No. L-40012/85/2005-IR (DU)] SURENDRA SINGH, Desk Officer ANNEXEME

IN THE CENTRAL GOVERNMENT INDUSTRIAL. TRÍBUNAL-CUM-LABOUR COURT. GUWAHATI, ASSAM PRESENT:

> Shri H.A. HAZARIKA, Presiding Officer CGT-cum-Labour Court, Gawahati Ref. Case No. 4 of 2006

In the matter of an Industrial Dispute between :--The Management of HSNL, Silcher

V/5.

Their Workman Sri Rakesh Sinha

APPEARANCES

For the Workman

: Mr. M. K. Jain, Advocage.

For the Management : Mr. D. Sur, Advocate

Date of Award 4-7-2007.

AWARD

1. The Government of India, Ministry of labour, New Delhi, *ide its Order No. L-40012/85/2005-TR(DLI). referred this Industrial Dispute arose between the employers. in relation to the Management of the BSNL, Silchar, and their Workman, Sri Rakesh Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947). on the basis of the following Schedule,

SCHOOL R

- "Whether the demand of Shri Rakesh Sinha for reinstatement of his services with the management. of BSNL, Silchar, SSA is legal, and justified? If so, to what relief the workman is emitted and which from date 🤲
- 2. On being appeared by both the parties the proceedings is proceeded here for disposal being numbered 4/2006 as per procedure.
- The case of the workman Sri Rakesh Sinits in brief. that he was in Department of Telecommunication under HSNL and worked against the Post of Muster Roll and Daily Rated Mazdour and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad. in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- That the workman produced the working days. list before the authority but the authority paid no heed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time burred as he regularly kept contact with the authority. for regularization.
- That the BSNL anthority, Government of India. New Delhi wide Tetter No. 269/10/89 STN dated 7-11-89 whereby it is humed the engagement/employment of Casual. I abouter from 1968. But the petitiones/claimant was weaking as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- That for many many years the petitioner/claimant. continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989, who worked 240 days. in a year. But authority deprived him from his claim.
- 8. That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.
- Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ BSNI, employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.

 That the workman claim that he is earlifed to have benefit u/s 25-G, 25-H of the LD.Act. 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service $\tau \tau$ employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT. New Delhiwlde No. 269-493-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence-in-affidavit filed by the workman Sri Rakesh Sinha. He claimed that he was engaged as Casual Labourer for 240 days in a year and as per Scheme he is entitled to be regularized. That he is retrenched without any reason and paid no wages in lieu of notice. That his case is not time beared as he approached the management from time to time for relief and the management assured him to regularize or to provide relief but I have not found that the Workman worked continuously for 240 days in a year to get relief under the Scheme. No original documents were called, no attendance Register is called to prove his claim. A Certificate is given by the workman in which it is reflected that he worked in 1989-165 days; in 1990-169 days and in 1991-152 days. This document is also not prove as per procedure. No Office issue No. is given and as it is a document related to financial matter it must be proved by calling the related financial documents. Further I find there is no evidence of creation of Post of Casnal Labourer. There is no evidence of engagement or appointment letter. No attendance Register is called to prove his claim. Further he is not within the Scheme as under :

"5. Temporary Status

① Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

I also found that the case is time harred as per Annexure-VI of the Management.

- 15. It is pertinent to note here that Sri Lachman Lak Bhar who is Sub-Divisional Engineer, Vigilance, BSNL, Silchar categorically stated that be does not know the workman. He was cross-examined as regards some documents but what I find the workman could not prove that he is within the ambit of the Scheme and that he worked 240 days continuously in a year.
- 16. Under the above facts and circumstraces what I find the alleged workman Srt Sinha is not entitled for any relief and his claim is rejected.
- Prepare the award and send it to the concerned authority as per procedure confidentially and immediately.

H. A. HAZARIKA, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का अ. 2169. - और में कि किया अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार दियाग के प्रबंधतंत्र के संबद्ध नियोक्कों और उनके कर्मकारों के बीच, अनुष्य में चिरिष्ट औद्योगिक विवाद में केन्द्रीय सरकार और अधिकरण्यक्षम न्यायक्तम, गुक्काटी के पंचार (संदर्भ संख्या 3/2006) को प्रकारित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं प्रन-40012/84/2005-अर्डआर(सीयू)] सुरेन्द्र सिंह, डेस्क अधिकारी

New Dethi, the 19th July, 2007

S.O. 2169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 3/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Grawshati as shown in the American in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

(No. L. 40012/84/2005-IR (DU)) SURENDRA SINGH, Deak Officer ANNEXURE

. 42

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H. A. HAZARIKA, Presiding Officer

CGIT-cam-Labour Court, Gawahad

Ref. Case No. 3 of 2006

In the matter of an Industrial Dispute between :--- : ...

The Management of BSNL, Silchar

 $V_{\ell \Delta}$.

Their Workman Sri Santa Sinha

APPRARANCES:

For the Workman

: Mr. M. K. Jain, Advocate.

For the Management

. Mr. D. Sur, Advocate

Date of Award 4-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L=0012/84/2005-IR(DU) referred this Industrial Dispute prose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Santa Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

- "Whether the demand of Shri Santa Sinha for teinstatement of his services with the management of BSNL, Silchar, SSA is legal justified? If so, to what relief the weakman is entitled and from which date?"
- On being appeared by both the parties the proceedings is proceeded here for disposal being Numbered 3/2006 as per Procedure.
- 3. The case of the workman Sri Santa Sinha in brief that he was in Department of Telecommunication under BSNL and worked "gainst the Post of Muster Roll and Daily Rated Muzdur and he worked for the development of network of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and bad in law, He received no retrenchment Notice in writing and in lieu of Notice of justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no head to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Lahours who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized, the workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide 1 etter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual labourer from 1988. But the peritioner/claimant was working at daily wage Mazdour in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Inspector (phone) Mr. Namar Ali submitted to Labour Commissioner.

- 7. That the Department of Telecommunication. New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989, who worked 240 days in a year. But authority deprived him from his claim.
- That under Acticle 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ BSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is entitled to have benefit u/s 25-G. 25 H of the 1.D. Act 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL. DOT. The BSNL has no liability to regularized the Applicant labourer.
- 12. That the DOT. New Delhi vide No. 269-4/93-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contraction on contract basis. That so called dispute raised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissioner (Central) and pointed our all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman,

 Perusaed the evidence desposed by Sm Lactman. Lal Bhar, Divisional Engineer Vigilance, HSNL, who is cross. examined by the learned Advocate Mr. M. K. Jain for the workman Sri Sarua Sinha. In his evidence-in-Affidavit the workman stated that he was working under BSNI... Department of Telecommunication, Silchar, on the basis of MR & DRM and worked for total period of 459 days. He also stated that the was retrenched by the Management without giving any notice and without paying wages in lieu of Notice. As per Scheme introduced by the DOT, New Delhi he ought to have been regularized but he is not regularized though he was assured by the Management to regularize him. As per claim, as he worked 240 days as engaged casual labourer he ought to have been regularized. In cross examination part he has deposed that no appointment letter was assued to him. A certificate was issued that he worked under BSNI, for 459 days. He filed the case after a long time for want of money.

15 I have gone through the certificate issued by Namar Ali, S. I. Phone countersigned by on Sub-Divisional Engineer. Phone. In this certificate no issue No. as per procedure is given. No original is called. This is related to financial matter, there must be financial record to prove this document. Hence, in my opinion this document is not authentic and acceptable as evidence. Further I find the workman Sri Santa Sinba could not prove that he falls in any Scheme for regularization. In Annexure-III there is a definition as regards Temporary Status which is as follows:

"5. Temporary Status

(3) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (20% days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

The workman Sri Santa Sinha could not prove that he was engaged by the Management and worked continuously for 240 days in a year. Further I also find as per Annexure-VI his claim is time barred.

- 16. Under the above facts and circumstances what I find that the workman could not establish that he was engaged by the Management and acquired temporary status to be regularized.
- 17. In the result, I find the Workman Sri Santa Sinha is not entitled for any relief and his claim is rejected.
- 18. Prepare the award and send it to the concerning authority confidentially and immediately.

N. A. HAZARIKA, Presiding Officer বৰ্ষ হিল্লী, 19 অল্ডাই, 2007

का.आ. 2170,—-औद्योगिक विकाद अधिनियम, 1947 (1947 क: 14) को भारा 17 के अनुसरण में, केन्द्रोय सरकार दूर संचार विकाश को प्रबंधकंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विकाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्वायालय, गुक्काटी के पंचाट (संदर्भ संख्या 2/2006) को प्रकाशिश करती है, जो केन्द्रीय सरकार को 19 7-2007 को प्राप्त हुआ या ।

> [सं. एल-400:2783/2005-आईआर(**डीयू)]** सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2170.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2006) of the Central Government Industrial Tribunal-cam-Labour Court, Gowahati as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of Telecom Department and their workman, which way received by the Central Government on 19-7-2007.

[No.L-40012/83/2005-IR (DU)] SURENDRA SENGH, Desk Officer ANNOTIRE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT:

Shri H. A. HAZARIKA, Presiding Officer CGIT-cum-Labour Court, Gewahati Ref. Case No. 92 of 2066

In the matter of an industrial Dispute between:

The Management of BSNL, Silchar

Vrs.

Their Workman Sri Fayaj Uddin Laskar.

APPEARANCES

For the Workman

Mr. M. K. Jain, Advocate.

For the Management

: Mr. D. Sur, Advocate

Dated of Award 4-7-07

AWARD

1. The Government of India, Ministry of Labour, New Delhi, vide its order No. L-40012/RJ/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Fryaj Uddin Laskar to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of sub-section (1) sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) on the basis of the following Schedule.

SCHEDULE

"Whether the demand of Shri Fayaj Uddin Laskar for reinstatement of his services with the management of BSNL, Süchar, SSA is legal and justified? If so, to what relief the workman is entitled and from which date?"

- 2. On being appeared by both the parties the proceedings is proceeded here for disposal being. Numbered 2/2006 as per procedure.
- 3. The case of the workman Sri Fayaj Uduin Laskar in brief that he was in Department of Telecommunication under BSNI, and worked against the Post of Master Roll and Daily Rated Mazdoor and the worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchment. The retrenchment was illegal, arbitrary, unjustified and had in law. He received no retrenchment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.

- 4. That the workman produced the working days list before the authority but the authority pend no head to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized; the workman claimed that his petition is not time burred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide 1 etter No. 269-10/89/STN dated 7-11-89 whereby it is banned the engagement/employment of Casual laburer from 1988. But the petitioner/elaimant was working as failly wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted ail documents but it remains without response. That the original work order given by the Sub-inspector (Phone) Mr. Namar Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Delhi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1989 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ HSNL employee. That the Casual Labourer or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- That the wrkman claims that he is entitled to have benefit u/s 25-G, 25-H of the LD.Act, 1947.

Under the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

- 11. The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularize the Applicant (abouter.
- 12. That the DOT. New Delhi vide No. 269-4693-STN II (Pt) dated 12-02-1999 the authority of all DOT Officers for engagement of casual labourers as well as the power of all Accounts Officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute raised by the Applicant after 15/16 years and is simel barred.
- 13. That the Management of BSNL attended the conciliation meeting held by the Assistant Labour Commissipher (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

14. Perused the evidence in Affidavit filed by the workman. The workman is not cross examined by the Management Advocate. The Advocate for the Workman submitted that he is not willing to proceed with the case as the workman is not willing to kee contact to him.

Perusal the evidence desposed by Sri Bijan Behari. Nath, Sr. S.D.E., Legal, BSNL, Sikhar. He has deposed that the alleged workman is not employee of the Management. He was never appointed by the Management. No appointment letter was issued to him. He is not crossexamined by the learned Adovcate Mr. M.K. Jain. The reason behind it is that the workman remain absent. However I have perused all the relevant documents and evidence-in-Affidavit of the workman. I find the workman. Fayaz Uddin Ahmed though clumined that he worked 530. days yet I found he has not worked 240 days continuous. work in a year. Further there is no evidence of creation of posts of Grade-D or casual labour to give him status and regularization of casual labourer. He has submitted a list of working days but that has not ben proved as per procedure. No documents is called from the end of the Management. even the Attendance Register. The matter as per Annexure-VI of the Management is fatal due to inordinate delay. All. in all I find the workman side is failed to establish that he was a casual labourer at any time under the Management. It is very much important to note here that to acquire temporary status the following condition is to be proved: by the workman and in the instant case the workman entirely. failed to proved it.

"5. Temporary Status

- (i) Temporary Status would be conferred on all the casus: labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five-day week). Such casual labourers will be designated as Temporary Mazdoor."
- 16. In the result, what I find the Workman is not cotitled for any relief he claimed and his claim is rejected. Accordingly prepare the award and send it confidentially to the authority enocemed immediately.

H. A. HAZARIKA. Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

का,आ. २१७१, --- उत्तैद्धोंगिक विवाद अधिनियम, 1947 (1947 का १४) को धारा 17 के अनुसरण में, कंन्द्रीय सरकार दूर संचार विधार के प्रबंधतंत्र के मंबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में कंन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुयाहारों के पंधाट (संदर्भ संख्या 1/2006) को प्रकाशित सरही है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त. हुआ था ।

> [सं. एल-40012/82/2005-केईआर(डीवृ)] सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2171.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2006) of the Central Government industrial Tribunal cum-Labour Court, Guwahati as shown in the Admentic in the Industrial Dispute between the employers in relation to the management of Telecom Department and their workman, which was received by the Central Government on 19-7-2007.

(No.1.-40012/R2/2005-IR (DU))
SURFNDRA SINGH, Desk Officer
ANNEXEME

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CUWAHATI, ASSAM

PRESENT:

Shri H. A. HAZARIKA, Presiding Officer
CGIT-com-Labour Court, Governati
Ref. Case No. 61 of 2006

In the matter of an Industrial Dispute between:

The Management of BSNL, Sächar

 V_{ex}

Their Workman Sri Anil Sinha APPEARANCES

For the Workman

:Mr. M. K. Jain, Advocate

For the Management

: Mr. D. Sur, Advocate

Dated of Award 4-7-07

AWARD

i. The Government of India, Ministry of labour, New Delhi, vide its order No. L-40012/82/2005-IR(DU) referred this Industrial Dispute arose between the employers in relation to the Management of the BSNL, Silchar, and their Workman, Sri Anil Sinha to adjudicate and to pass an award on the strength of powers conferred by Clause (d) of subsection (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) on the basis of the following Schedule.

SUMMILE

"Whether the demand of Shri Anit Sinhs for reinstatement of his services with the management of HSNL, Silchar, SSA is legal justified? If so, to what relief the workman is entitled and from which date. ?"

- On being appeared by both the parties the proceedings is proceeded here for disposal being. Numbered 1/2006 as per Procedure.
- 3. The case of the workman Sri Anil Sinha in brief that he was in Department of Telecommunication under BSNL and worked against the Post of Master Roll and Daily Rated Mazdur and he worked for the development of net work of BSNL for the installation work and maintenance of the development work. But the BSNL retrenched him without assigning any reason and no opportunity was given to him at the time of retrenchencer. The retrenchment was illegal, arbitrary, unjustified and bad in law. He received no retreachment Notice in writing and in lieu of Notice the justified amount was not paid to the workman.
- 4. That the workman produced the working days list before the authority but the authority paid no beed to it and the Department of Telecommunication introduced a Scheme for regularization of Casual Labourers who worked continuously for 240 days. But though he worked the prescribed period of 240 days continuously he was not regularized. The workman claimed that his petition is not time barred as he regularly kept contact with the authority for regularization.
- 5. That the BSNL authority, Government of India, New Delhi vide letter No. 269-10/89/STN deted 7-11-89 whereby it is banned the eggagement/employment of Casual laboure from 1988. But the petitioner/claimant was working as daily wage Mazdoor in the Telecommunication Department and the payment has been made on AGC -17.
- 6. That for many many years the petitioner/claimant continuously keeping contact with the authority and submitted all documents but it remains without response. That the original work order given by the Sub-Impector (phone) Mr. Namer Ali submitted to Labour Commissioner.
- 7. That the Department of Telecommunication, New Dethi introduced a Scheme for regularization of Casual Labourers under the grant of temporary Status and regularization Scheme of DOT 1969 who worked 240 days in a year. But authority deprived him from his claim.
- That under Article 38 of the Constitution he is entitled for security of service and promotion and welfare.
- 9. Under the present circumstances the authority ought to have been reinstate and regularize the workman as DOT/ BSNL employee. That the Casual Labourez or Daily Wagers and temporary employee can not be terminated without any reason assigning to them.
- 10. That the workman claim that he is cutitled to have becefit U/s 25-G, 25-H of the I.D. Act.1947.

Duder the circumstances the workman prayed to pass order to reinstate him and regularize him with back wages.

 The case of the Management BSNL, DOT in brief that the workman never worked in service or employment in BSNL, DOT. The BSNL has no liability to regularized the Applicant labourer.

- 12. That the DOT, New Delhi vide No. 269-4/93-STN II (Pt) dated 12-[2-1999] the authority of all DOT Officers for engagement officers to pay any such casual labourer is withdrawn. That the departmental development works are done through the contractor on contract basis. That so called dispute traised by the Applicant after 15/16 years and is time barred.
- 13. That the Management of BSNL attended the conciliation theeting held by the Assistant Labour Commissioner (Central) and pointed out all such points and argument about all the points against the workman.

Under the circumstances the Management prayed to dismiss the claim of the alleged workman.

- 14. Perusal the evidence-in-Affidavit filed by the workman. Also perused the cross examination made by Mr. D. Sur, Advocate for the Management, Also perused the evidence deposed by Sri Lachman Lai Bhar for the Management, who is cross-examined by the learned Advocate Mr.: M.K. Jain for the workman. The brief contention of the evidence submitted by the workman Anil. Sinha that he was a BSNI employee worked for total period 483 days. That he is illegally retremched by the Management without notice and without paid in lieu of Natice. That he ought to have been regularized as he has worked for 240 days in a lyear. The he has submitted in Ext. A a erztificate issued by Jamar Ali, Sub-Inspector, Phone under whom he worked for 483 days. In cross-examination part he has admitted that no appointment letter was issued to him. That prescritly he is not working under BSML. In crossexamination part he has also admitted that the matter became time barred due to protext by the Management as management assured him to regularize time to time Ext. A is the list of working days, he worked.
- 15. The witness for the Management deposed that workman is not known to him and no appointment letter is used to issue to the Causal employee.
- Advocate for the Management and Mr. M. K. Jain. Advocate for the Management and Mr. M. K. Jain. Advocate for the workman. Perused the documents relied by both the parties. I find a list of working days is submitted by the workman but to prove the same he has not called any record from the end of the Management. This document can not be accepted anthentic document. However, I have found though the worked 483 days yet he has not worked 240 days in a year. As per the Scheme to be regularized he must be a Casual employee and he must work 240 days in a year. No Attendance Register is called and proved. There is no evidence of treation of posts for Grade-D employee or Casual labourer. It is not proved that the workman worked under BSNL. The Management has submitted Annexure-VI wherein as regards the time limitation is

described. I find as per this Anexure the claim of the workman due to inordinate delay became not entertainable. It is not proved by the workman that he is entitled for any Scheme of the BSNL as the relation of the workman and the Management is not an existence or proved. To acquire temporary status of Casua: labour as per Annexure-III the following condition is to be fulfilled:

"5. Temporary Status

(i) Temporary Status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing fiveday week). Such casual labourers will be designated as Temporary Mazdoor."

But what I found the workman has not fulfilled this condition. Hence, he is not entitled for regularization as casual employee under the BSNL or the Management. In the result, I find the workman is not entitled for any relief and his prayer is rejected.

17. Prepare the award and send the same to the authority concerned as per procedure confidentially immediately.

> H. A. HAZARIKA, Presiding Officer নই বিল্লী, 16 সুধার্চ, 2007

का.आ. 2172.— केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (ह) के तप खण्ड (ण) के तपवंचों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या कर आ. 268 दिनांक 16-1-2007 द्वारा बैंक नोट मुदणालय देवास (प.प्र.) जो कि औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्ट 22 के अन्तर्गत निर्दिष्ट किया पया है, को उक्त अधिनियम के प्रयोजनों के लिए दोक 19 1-2007 से छ; मास की कालावधि के लिए लोक उपयोगी संक्षा कोवित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छ: मास की और कालावधि को लिए बढाया जाना अयेक्ति है ;

अत: अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को शारा 2 के खण्ड (इ) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शिक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दि. 19-7-2007 से छ: मास की कालावध्य के लिए लोक उपयोगी सेवा घोषित करती है।

> [फा. मं. एस-11017/1/20**८**६-आई आर (मीएल)] गुरबात कौर, संयुक्त सचिव

New Dethi, the 16th July, 2007

S.O. 2172.—Whereas the Central Government having been satisfied that the public interest so requires

that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S. O. No. 268 dated 16-1-2007 the service in Bank Note Press, Dewas which is covered by item 22 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a Public Utility Service for the purpose of the said Act, for a period of six months from the 19th January, 2007.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the provise to sub-clause (vi) of clause (u) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a Public Utility Service for the purposes of the said Act, for a period of six months from the 19th July, 2007.

[F. No. S-11017/1/2006-IR (PL)]

GURJOT KAUR, It Socy.

नई दिल्ली, 17 **युर्त**ाई, 2007

का.3न. 2173.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) को बारा-1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा । अगस्त, 2007 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 भारा के सिकाय जो पहले से प्रवृत्त हो चूकी है) अध्याय-5 और 6 [चूरा 76 की उपचारा (1) और धारा 77, 78, 79 और 81 के सिकाय जो पहले ही प्रवृत्त की जा चुकी है] के उपवस्थ आन्य प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थान् :—

"आन्ध प्रदेश राज्य के कहमा जिले में स्थित जन्मलम्हुगु मण्डल के अन्तर्गत जम्मलम्हुगु नगर पालिका के सीमा के अन्तर्गत सभी क्षेत्र एवं मोरगृष्टि सनस्य गाँव ।"

> [सं एस-38013/19/2007-एस.एस.-1] एस. दो. चेलियर, अवर सचिव

New Delhi, the 17th July, 2007

S.O. 2173.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except sub-section (1) of Section 75 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Andhra Pradesh namely:—

"All the areas falling within the Municipal limits of Jammalamadugu and Revenue Villages of Moragndi of Jammalamadugu Mandal of Kadapa District in Andhra Pradesh."

[No. S-38013/19/2007-S. S. I] S. D. XAVIER, Under Secy.

चई दिल्ली, 17 जुलाई, 2007।

का,आ, 2174,---केन्द्र सरकार, राजमान (संघ के शहसकीय प्रयोजनों के लिए एयोग) नियम, 1976 के नियम 10 की उप-नियम (4) के अनुसरण में निम्नलिखित कार्यालय को, जिनके 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यमाधक ज्ञान प्राप्त कर लिया है, अधिसृष्ठिक करती है ;

क्रम संख्या	कार्यालय का नाम
ı.	आंचलिक प्रशिक्षण संस्थान (उत्तरी अंचल), फरीग्रामन
2	धेत्रीय सम् आयुक्त (केन्द्रीय), चयपुर
3.	सहायक श्रप आयुक्त (केन्द्रीय), कोटा
4.	अम् प्रवर्तन अधिकारी (केन्द्रीय), उद्धपुर
5.	अम प्रवर्तन अधिकारी (केन्द्रीय), जोधपुर
6	अम प्रसर्तम अधिकारी (केन्द्रीय), बीकानर
7.	त्रम प्रवर्तन अधिकारी (केन्द्रोय), भीलकहा
<u> </u>	अम प्रवर्तन अधिकारी (खेन्द्रीव), सवाईमाधोपुर

[सं. ई-11017/1/2006-सम्बन्धे]

त्तारदा प्रसाद, संयुक्त सचिव

New Delbi, the 17th July, 2007

S.O. 2174.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union). Rules, 1976 the Central Government hereby notifies following offices, 80% Staff whereof have acquired working knowledge of Hindi:—

St. No. Name of the Office

- Zonal Training Institute (North Zone), Faridahad.
- Regional Labour Officer (Central), Jaipur
- Assistant Labour Officer (Central), Kota
- Labour Enforcement Officer (Central), Udaipar
- Labour Enforcement Officer (Central), Joshpor.
- Labour Enforcement Officer (Central), Bikaner
- Labour Enforcement Officer (Central), Bhilwara.
- Lubour Enforcement Officer (Central), Sawai Madhopur

(No.E-11017/12005-RBN) SHARDA PRASAD, It Secy.

नई दिल्ली, 19 जुलाई, 2007

का, आ. ;2175. — और्ध्योगक विकर अधिनयम, 1947 (1947 का 14) की धमा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंग्डिया के प्रबंधांत्र के संबद्ध नियोजकों और उनके कर्मकाएँ के बीच, अनुबंध में निर्दिष्ट औद्योगिक विकार में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय, चेनई के पंचाट (संदर्भ संख्या 232/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं एल-12012/433/98-आईस्मर(बी-1)] अवय कुमार, बेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government perchy publishes the award (Ref. No. 232/2004) of the Central Government Industrial Tribunal-cum-Labour Count, Chennai as shown in the Amexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government of 19-7 2007.

[No.L-12012/433/98-IR (B-fr)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wéducalay, the 31st January, 2007
PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 232/2004 (Principal Labour Court CGID No. 151/99)

(In he matter of the dispute for adjudiation under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), between the Magnagement of State Bank of India and their workmen)

BRIWEEN

Sri M. Anaoda Babul

: 1Party/Petitioner

AND

The Assistant General Manager, : If Party/Management State Bank of India,

Z. O. Chennaj.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaran,

Authorised Representative.

For the Management

: M/s. K. S. Sundar,

Advocates.

AWARD

 The Central Covernment Ministry of Labour, vide Order No. I.-12012/433/98-IK (B-I) dated 10-2-1999 has referred this dispute carrier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 151/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1.D. No. 232/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Ananda Babu, wait list No.741 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is crititled?"

 The allegations of the Petitioner in the Claum Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Pallavaram branch from 14-3-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Whit Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and Ali India State Bank of India Staff. Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified the workmen under three categories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitomer about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Brunch Manager of the Pallavaram branch, He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 14-3-1983, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Guindy branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not sequired any more and he seed not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularize him in service. in due course. The Respondent/Bank took up an unreasonable stand that the service and the wember of days worked by Petitioner were treated at of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the sertlements we repugnant to Sections 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the actilement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not hased on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to gradrelief of regular employment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govi. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temperary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Pederation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered: for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait timed as candidate No.735 in wait list of Zonal Office, Cheshiel, So far 357 wuit fisted temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messanger. The Petitioner was engaged only in leave vacancies as and when it mose. When the Putitioner baving submitted to aelection process in terms of settlements drawn as per retrenchment provisions referred to above. eannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any combinuous block of 36 calendar. months and under category (C) the temporary employees who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid. and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The poculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary corployees were appointed and since the Petitioner was wait listed at 735 he was not appointed. The said actifements were bong fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said scatements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the couptry. The Tamil Nado Industrial Establishment (Conferences of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to cotertain such plea. It is not correct to say that documents and identity of Petitioner was verified. before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employers and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chenasi walt list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expity of wait list, the Petitioner has no claim, for permanent absorption. Hence, for all these teasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Rhapmodent/Bank for selection of candidate for appointment in the post of messenger and other class TV post. He was engaged in the measurger post in the subordinate cadre of the Respondent/Bunk consinuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioned be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed wrojkmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whichs and fancips. Hence, the Petitioner prays that an award may be passed in his favour....
- 6 Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not upder section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:—
 - (i) "Whether the demand of the Petitioner in Wall List No. 741 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary comployees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorbtion of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M 1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice dedied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other uttendant benefits.

On behalf of the Petitioner, it is contended that: these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by settlement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous. period of 12 calendar months and was not in continuous. service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers. and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workroen to whom Section 25F applies. but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workingen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and WR as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M 1 and the averments of MW1 and MW2 and their testimoples during the cross-examination will clearly show how the bank has given a 12w deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of "last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolles, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. Wa. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's. circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is net valid. Therefore, these persons who were engaged by the Respondent/Bank on casual busis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types. of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are matriced as $F_{\rm K}MI$, M3 and M4 respectively. But, when MW I has spoken about the settlements, he deposed that settlement dated 27-10-88 was out included in the Madrus circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bold statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wall list. Further the Hon"ble High Court has beld in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages. daily on mutual agreement basis. In such circumstances. as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Hank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after this process of selection and were paid wages on the basis of industry wise settlement, it is not to in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. MD provides for the same norms to the castrals as in the case of temporary employees in the matter. of sheorption. Therefore, it is violative of Article 14 🎉 16 of Constitution of India. Therefore, the Petitioner contended that proporation of Ex. M 10 namely want list is that is conformity with the instructions of Ex M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 11932/91 in W.P.No. 7672/91 direction the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-5-88. Purthermore, weit list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Px, M I was not produced. at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Hunk has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (eq) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D.SINGHVs, RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies casuals. or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal.' Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be decined to have refused it and the name shall stand deleted from the respective panel and he shall have on further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced lany document show how he has arrived at the semiority and till date, it is a mystery as to who that semior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service. of the Respondent/Bank is arbitrary, mala fide and illegat and the Respondent/Bank has not acted to " accordance. with the terms of settlement on absorption of lemporary employees, Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation. proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3). settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP. No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the seulements which are marked as Bx. M1 to M5. Above all though the Respondent/Bank has referred to voluntary jetirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/

Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as eashrined under Section 25B and 25F of the Industrial Disputes Act, therefore, sheir retrenthment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners. in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar. months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported 10. have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were desired further engagement. on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed, in such circumstances, this Tribunal has to pass an award in their lavour.

10. But, as against this, the learned senior counsel for the Respondem/Bank contended that the reference made by the Covernment itself is not maintainable in view. of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes. were not in continuous service. Hence, the question of regular appointment/abscrption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bunk and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as perlength of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent!

Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was aponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bunk and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement. directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level sentements. and operate throughout the country. Further, he relied on the rulings reported in 1991 HLI 323 ASSOCIATED GLASS. INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL Λ .P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the join and received terminal benefits, but the workmen raised. a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has beld. that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is hinding on the workmen." Learned counsel for the Respondent further relied on the rollings reported in 1997 \$ 111 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSFORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the contribution proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual couplayee or a minority union from scuttling the settlement," It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD, $V_{\rm S}$. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) these arrived at outside the conciliation. proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first-category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding. on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were.

members and if there was nothing sureasonable or unfair. in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rolings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concesiment of facts or even corruption and other inducements, it could be subject-matter of yet another industrial dispute which an appropriate Gove. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is: alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the säme.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the referencement made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is: contended that mere wording of reference is not decisive. in the matter of renability of a reference and be relied on the rulings reported in 1998 LAB [C 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference. is not decisive in the matter of tenability of a reference, Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look jotothe pleading and find out the exact nature of pleading of the Petitioner to find out the exact name of dispute instead.

of refusing to passwer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is in he reinstated in service. or not for which he relied on the rutings reported in 1998. LARIC 1664 YAN SAGNATHAN ORIENT PAPER MILLS Vs. INDESTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the ridings reported in 1998 LAB IC 1507 A. SAMHAN (HAN Vs. PRESIDING OFFICER, LABOUR) COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical. manner or a perfamile manner, but should consider the order of reference inpulsir and reasonable manner." He also argued that in Express Newspapers P. J.td. case reported in Alk. 1993 SC 569 the Supreme Court has held that "the Tribonal. has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labout Court " Relying on all these decisions, the representative for the Potitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Peritioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by hith. Therefore, the argument advanced on the side of the Mespondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is editited to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly emered into between the Respondent/Bank and Pederation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VHEESH wherein the Supreme Count has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govel service in an existing or a future vacancy." In that case, pruning of

select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a centain number of bottom. persons were removed from the select list and the remaining. selectees were given appointments appoint in their comparative merits. In which, the Supreme Court has held that "in such circumstances, demail of appointment to the persons removed from the select list is not arbitrary and discriminatory. THe further relied on the rulings reported in 1997 6 SCC 584 SYNE)ICA HUBANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valud for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment. in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the **Respondents** did not get any right because of multisjon. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The ciaim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge. and the Division Beach, when it first decided the appeal were right in dismissing the With Petition and the appeal. respectively." He further relied on the milings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates" included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Peritioner has no right to question the wait fist and isince there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Under such circumstances, after the expiry of the date namely 31 3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported to 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PLARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming tothe direction that all those ad-hoc temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-heg/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creating of a vacancy; (b) he was not sponsored by Employment Exchange nor was beappointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from a giving of such blanket orders. None of the decisions relied.

upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be bold that in each and every case, such a direction must follow intespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and direumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impagned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 DSCC I ASHWANI KUMAR AND OTHERS V₆. STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the condidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these, circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYAKIHLA ORS VESTATBOF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of

'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "mezely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Coun to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right," Further, it has also held that " it is not as if, the person who accepts an engagement either temporary or casual in name. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court white laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointed...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL F<u>ERTILIZERS</u> LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore. is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further,

in CDJ 2006 \$C 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINI)ER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent. was not in functioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made to violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16 of the Constitution of India would be word in law." Further, ia 2006 ZILLA 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVILLOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only i because an employee had worked for more than 240 days. of service by that itself, would not confer any legal right. upon him to be regularised in service. " The Supreme-Court also field that "the changes brought about by the subsequent decisions of this court probably having regard. in the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, prevatisation and osusourcing is evident, in view of the settled legal position, as noticed hereinhefore."

- Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has be been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five sculements leatered into between the Respondent/Bank and l'ederation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment. thereon as demonstry messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.
- I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements. entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number attotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bosta fide in nature or it has been arrived at on account. of mala fide, misrepresentation, fraud or even comuption or other indicements. Under such circuinstances, I find the Peritioners connot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary. employees to be absorbed. I find the Petitioners cannot

claim for reinstatement or regularisation in services of the Respondent /Bank.

- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govr, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petrioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this pount against the Petrioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

- 20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Perinoner is not entitled to any rehelf as claimed by him. No Costs.
 - Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by time in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW i Sri M Ananda Babo

WW2Sri V. S. Ekambaram

For the Respondent : MWI Sri C. Mariappan

MW2Sri C. Ramalingam

Documents Marked:-

Ex. No. Date Description W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1. W2 X404-88 Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

W3	24-04-91	Bank to all Branches regarding	W 21	26- 03-97	Xerox copy of the letter advising selection of part time Menial —G. Pandi.	
		absorption of daily wagers in Messenger vacancies.	W22	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.	
V4	01-05-91	Xerox copy of the advertisement in the Hindu on daily Wages based on Ex. W4.	W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Machinal Circle.	
N5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W24	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary	
V6	15-0 3-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up of vacancies of messenger posts.	W25	09-11-99	comployees from the panel of wait list. Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of	
V 7	25-03-97	Xeros copy of the circular of respondent/ Bank to all Branches regarding identification of messenger vacancies	₩26	09-07-92	messenger staff. Xerox copy of the manutes of the Bipartite meeting.	
V8	М	and filling them before 31-3-97. Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W2 7	09-07-92	Xzrox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-excation of part time general attendants.	
V9	07-04-86	Xerox copy of the service certificate issued by Pallavaram Branch.	W28	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time	
v tO	01-10-91	Xerox copy of the service certificate issued by Guindy branch.			employees and redesignate them as general attendants.	
VII	16-08-95	Xerox copy of the service certificate issued by Guindy branch.	W29	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate	
V12	18-18-90	Xerox copy of the service certificate issued by Quindy branch.	5 2	cadre. For the Respondent/Management:—		
V13	23-09-96	Xerox copy of the service certificate		o ruespueros). Date	Description	
1784	nz zer an	issued by Guindy branch.	MI	17-11 -8 7		
/15	, 03-07-89 - Mil	Xerox copy of the interview letter. Xerox copy of the administrative	M2		Xerox copy of the settlement.	
(V 1); [MII]		guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.	мз	27-10-88	Xerox copy of the settlement.	
			M4	09-01-91	Xerox copy of the settlement.	
			M5	30-07-96	Xerox copy of the settlement.	
V16	Nil	Xerox copy of the reference book on Staff matters. Vol. III consolidated up to 31-12-95.	M6	09-06-95	Xerox copy of the minutes of concllistion proceedings.	
V!7	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger	M 7	28-05-91	Xerox copy of the order in W.P. No.787291.	
unio della es		post-V. Muralikannam.	M8	15-05-98	Xcrox copy of the order in O. P. No. 2787/97 of High Court of Orissa.	
VIB	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.	М9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.	
V19	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger	M10	Nil	Xerox copy of the wait list of Chennal Module.	
		post—J. Velmorugin.			Xerox copy of the order passed in CMP	

नई दिल्ली, 1**9 जुलाई,** 2007

का.श्रा, 2176.—ऑद्योगिक विवाद अधिनियम, 2947 (1947) का. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बेंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध नियोककों और उनके कर्मकारों के बंध अपूर्वेश में निर्देश्य औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धेपई के पंचाट (लंदर्भ संख्या 250/2004) की प्रकाशित करती है, जो केन्द्रीय सरकार की 19 7-2007 को प्राप्त हुआ था।

[सं. रल. 12012/452/98: आईआर(बी-1)] अनय कुपार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2176.— In pursuance of Section 17 of the industrial Disputes Act. 1947 (14 of 1947), the Central Government Industrial Tribunal-cum Labour Court. Chemiai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/452/98-IR (B-t)]

AJAY KUMAR, Desk Officer

ANNEXURE:

BEFORE THE CENTRAL GOVERNMENT INDESTRIAL TRIBUNAL-CUM-LABOUR COURT. CIENNAI

Wednesday, the 31st January, 2007
PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 250/2004

(Principal Labour Court CGID No. 190/99)

(In the mater of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BEIWKEN

Sri S. Sukumaran

: IParty/Petitioner

AND

The Assistant General Manager, : If Party/Management State Bank of India,

2. O. Chemsti,

APPEARANCE

For the Petitioner.

: Sri V. S. Ekambaran),

Authorised Representative.

For the Management

: M/s. K. Veeramani,

Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/452/98-1R (B-I) dated 12-3-1999 bits referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its 6/e as CGID No. 190/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 250/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri S. Sukumaran, want list No.442 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as remporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thousand lights, beauch from 1982. The Peritioner was orally informed that his services were no more required. The non-employment of the Peritioner and others become subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Peration No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of sentement under Section 18(1) reached between management of State. Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workings who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified the workmen under three categories namely \mathbf{A}_i \mathbf{B}_i and C_i Through the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petationer also submitted his application in the prescribed format through Branch Manager of the thousand lights branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Peritioner was informed enally to join at the branch where he initially worked as a class IV employee, From 1982, the Petitioner has been working as a temporary measurager and some time performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were ineported to be in service during the same period. While the Peririones was working as such, the Manager of the branch informed the Patitioner orally on [31-3-1997 that his services are not required any more and he need not artend the office from i. 4, 1997. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in

failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal. the reference framed did not satisfy the grievance of the Perinioner, he has made a fresh representation to Govi. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an amreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bunk, it engaged the Petitioner only in temporary services after the sentement. The Petitioner was not aware of scalement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has heen prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, readical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Peritioner and extracted the same work either. by payment of perry cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait his suffers serious informities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant herefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lice of provisions of isw, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bone fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait histed as per his length of engagement and could not be absorbed as he was positioned down to seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was esponsed by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of exociliation proceedings and minutes were drawn under Section 18(3) of 1.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.443 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in letture of actriculents drawn as per retreachment provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and bence, they were appointed. Under the scalement, employees were categorised as A,B, and C. Considering their temperary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temperary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in Decomber, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement acheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait fixted at 443 be was not appointed. The said settlements were bong fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the actilements. of bank level settlements and operated throughout the country. The Tamit Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified. before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent mestenger. As per settlements, vacancies upto

- 31-12-94 were fitled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim; for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.
- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Politioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under not circumstances, wait listed persons like the Petitioned be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passedlin his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner grays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 442 for restoring the wait list of temporary messengers. In the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) To what relief the Petitioner is entitled?"

Point No. 1:

- 8. In this case, on behalf of the Peririoner at is contended that the Peritioner in this case and the Peritioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/tirculars of the Respondent/Bank in permanent vacancies. In suburdinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several remporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition. No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorbtion, of temporary employees and filed it before the Supreme Court. 4) the time of final bearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Mil. The Petitioner in this case. and the Petitioners in the connected cases anacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice denied an opportunity privork in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the Jabour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with hack wages and other attendant benefits.
- 9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and emputars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not howard by settlement under Section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of stratinstructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees. at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitiones working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers. and are eligible to be reinstated. Learned representative for

the Pectioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 251/applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category. of retreached workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the curvular instructions of the Respondent/Bank issued from time to sime in composion with the implementation of the settlements on absorption and which are stability in character. Further, a combined study of Ex.MI and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Peritioner from the beginning tinking his future with the settlements. Further, Clause 1 of T(x, M)deals with categorization of retrenched temporary employees into "A, B and C", but this caregorization of "A. B & C' is quite opposed to the doctrine of flast come. Gratgo" or first come— last go" and therefore, the caregorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweeppas etc. for absorption along with the other eligible categories. of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. expy of which is marked as Fig. WS. Further, the appointment of duity wage basis for regular messengerial jobs etc. are strictly prehibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the oligible categories as not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuats were given more heneficial treatment in the matter of arriving at qualifying service for interview and selection. Bur, temporary employees have not been informed about this amendment which includes cusuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have propared only one wait list for each module as per Ex.M 10. in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW. I is unable to say as to when the wait list Ex.M10. was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88. and 9-1-91 which are marked as Ex.MI, M3 and M4 respectively. But, when MW1 has spoken about the scalic ments, he deposed that settlement dated 27-10-KK was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his hald statement. Further, according to MW1 wait list under

Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class TV employees who were paid scale wages as per Bipurtite Settlement while the 1988 settlement dealt with daily wager in Class IV category. who were paid wages daily on mutual agreement basis. In Such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they fromed two distinct and regarate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are comrany to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing emgls. with unequals. It is further contended on behalf of the Pentsoner that as per deposition of MWT wait list under Ex.M10 comparises of both messengerial and nonmessenectial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distanct categories. But, Ex.M3 provides for the same norms to the caspats as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait last is not incomformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular, Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthernme, no wait list was released/ published even after the Court order in WMP No. 11932/ 91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait hat under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days pur in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions. and ceased to have the credibility attached to the wait list. Above all, Ex. M. I was not produced at the time of concitiation proceedings held during the year 1997-98 held. at Chennai and Madwai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document, It is: further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement On absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device.

to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent. Bank is confinence and though the Peritioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sextry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985.4 SCC 201 JLD, SINGH Vs. RESERVE BANK OF INDIA AND OTTERS wherein the Supreme Coor, has held that tito employ workmen as "badlies" casuals or temporaries and to confinue them as such for many years with the object of depriving them of the status and privileges of permanent, worknien is illegal." Learned representative further compended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidutes with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in low. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in otter violation and in breach of it. Though clause Dies of Ext M4 states that candidates found suitable for permaners appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment us posting wijting the prescribed period, he will be decined to have refused it and the name shall stand deleted form the respective panel and he shall have no forshor claim for being considered for permanent appointment in the bank. The Respondent/Bank has not 'produced any document show how he has arrived at the semority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the avenuent of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bunk as arbitrary, mala fide and illegat and the Respondent/ Bank has not acted in " accordance with the terms of settlement on absorption of hemporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings date:1 § 6-75 hef

pre Regional Labour Commissioner (Central). Hivderahad, it is neither a 18(3) settlement not 12(3). settlement as claimed by the Respondent/Bank when says andy with regard to modify attinuof. For MI to M4 heads in terms of Ex. M6. Though the Respondent/Bank predoced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No. 7872/91 ceased to have anymelevance when the main wnt has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Peritioner. Further, though the Responding Management has examined two witnesses, the deposition of management witnesses during the crossexamination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M t to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Responders/Bank it was implemented only in the year 2001 and it constitutes post reference period and bence evidence

of Respondent/Bank has no application to the Petitioner's case. The Peritioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, discrefore, their retrenchment from service is allegal and against the mandatury provisions of Section 25. and therefore, they are deemed to be in continuous service of the Respondent/Bank and they fee mulded to the benefits under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the culings reported in 1985 II. (LL) 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION ${f V}_{S}$. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employed connut mean that those days unity when the workanes; worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the mapleyment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank is discular and therefore, their retrenchment is illegal. In all these cases, the Profound's were in employment as said staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Pytitioners some of them have completed 240 days and more in a communuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they tend themselves stransded in life midstream. They have also not gainfully employed, in such circumstances, this Tribunal has to pass an award in their tavour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not boundide and greinage withoutering metive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Forther, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is hinding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 [LJ 323 ASSOCIATED GLASS] INDUSTRIES L'ID. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign volumarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of concitiation is vitiated by fraud, misrepresentation or coercion, the sentement is binding on the workmen." Learned counsel for the Respondent further relied on the rollings reponed in 1997 Π LLD 1189. ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union. will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity. of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective butguining is cotilled to due weight and consideration." Learned compact for the Respondent further relied on the rulings reported in 1997 I LLI 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two caregories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation. proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be birding on all workmen of the establishment. Even

in case of the first category, if the settlement was reached. with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the, rulings reported in AJR 2000 SC 469. NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the sculement is not bons fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements is could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement. and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demant of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that more wording of reference is not decisive in the matter of tenability of a reference and he relied on the rutings reported in 1998 LAB IC 345 SECRETARY, NOLLAM FILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find our some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery

again." It fugher held that "the Tribunal should look into the pleading and find our the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitroper is to be reinstated in service. as not for which he rehed on the rulings reported in 1998 LABIC REAL MAN SAGNATI IAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madbya Praffesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESTUING OFFICER, LABOUR. COURT, MADRAS, wherein it has been held that fat has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a gedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real patters of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not from the pleadings it is clear that the Perfitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can knok anto the pleadings. of the Petitioners and can decide whether the Petirioner is entitled to be reinstated in service as alleged by him and whether he is catified to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination."

in this appeal is whether a candidate whose name appears. in the select list on the basis of competitive examination. acquires a right of appointment in Govt, service to an inexisting or a future vacancy." In that case, pruning of saled list no reduction in number of vacancies was made to view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of vacuaties and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were enven appointments according to their comparative merits. In which, the Supreme Court has heldthat "in such circumstances, denial of appointment to the persons removed from the select list as materialismy and discriminatory." He further relied on the rulings reported in 1997 6 SCC 5848 YNDICATE BANK & ORS, Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to contenus them any right to seek permanent appointment. in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the sold panel for permanent absorption. in the services of the bank. Whatever conditional rightthey had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, measured and therefore, the learned Single Judge and the Division Bench, when a tirst decided the appeal were right in dismissing the Writ Perition and the appeal. respectively." He further relied on the rulings regorded in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF UNDIA wherein the Supreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned coensel for the Respondent contended that since the Permoner has no right to question. the wall list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Coder such discumstances, after the expany of the date namely 31 3-1997, the Petitioner cannot plead for restoration of the want list and he cannot pray for reinstatement as alleged by him. Further, he relied on the odings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORN, VS. PLARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain in. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy: (b) be was not sponsored by Employment Exchange nor was he appointed in pursuance of a nonfication calling for applications which means he had entered by a hack door

(c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere commutation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such comingance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held. that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned. directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 ILSCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available, vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a nonexisting vacancy would never survive for consideration. and even if such purported regularisation or confirmation. is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was not occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temperary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of "last come - first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his jumors were made permanent by the Respondent/ Bank. Any how, if the Pentioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Serior Advocate further argued that even. in recent decision reported to 20064 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme. Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to he absorbed in regular service or made permanent metely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant index. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do on acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another naide of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified. persons, the same would not confer any right on the appointee..... It has to be clarified that merely hecause a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a dueprocess of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTH IZERS LTD. AND

OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of protestion would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SIMANPUR VA. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in senctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of Judia would be youl in law." Further, an 2006 2 LIJN 89 MADITYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that 'misky because an employee had worked for more than 240 days. or service by that itself, would not confer any legal right. upon him to be regularised in service." The Supreme Court 4:50 held that "the changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Govt, in the 4.5ke of prevailing market economy, globalisation, #:varisation and outsourcing is evident, in view of the seitled logal position, as noticed hereinhefure."

Relying on all these decisions, learned counsel. the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appropried in regular vacancy or sanctioned post, the Petit oner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five sentiaments entered into between the Respondent/Bank and fiederation and since they have not questioned the Will be repared by the Respondent/Bank, they are not callilled to dispute the same and they are estopped from deling so. Further, their prayer before the labour authorities. were only to restore the wait list and also for appointment sharean as temporary messenger as per wait list. Under such throughstances, after expiry of the period mentioned. in the scitlefocus, which were subsequently amended by and the Petitioners cannot now question either the interpretations of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I flock on the force in the contention of the learned courses the Respondent. Though in the Claim Statement, the Peritioners have made so many allegations with regard to increasing of wair list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, skey have not questioned the settlement nor tile number alletted to each individual in the wair list. The time, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona face in nature or it has been arrived at on account of mala fide this representation, fraud or even corruption or other

inducements. Under such circumstances, I find the Petitioners cannot now question the sentements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim increinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and beace, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govi, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstancment in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such cantinuance of work. I find the Petitioner is not entitled to any rehelf as claimed by him. No Costs

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by the in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer.

Witnesses Examined:

For the Petitioner WW I Sn S, Sukumaran

WW2 Sri V. S. Ekamberam

For the Respondent MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam

Documents Marked :-

Ex. No. Date		Description
WI	20-08-88	Xerox copy of the Madras L.H.O. State Circular No. PER/IR/18/88 regarding wait lists and projected vacancies.
W2	1-8-88	Xerox copy of the notice to the temporary employees based on the Settlement dt. 17-11-1987 "Daily Thanthi".

		· 			
₩3	3 4 4 9 1	Xerox copy of the Madras LHO Circular No. 6 (91-92) regarding absorption of daily wagers in messenger vacancies.	W19	17-03-97	Xerox copy of the service particulars— I. Velmurugan
W 4	01-05-91		W20	26-03-97	Xerox copy of the letter advising selection of part time Menial— G. Pandi
ws	20-08-91	Xerox copy of the Forther Notice to the Daily Wagers extending the period of	W 21	31-03-97	Xerox copy of the Appointment Order to G. Pandi
		qualifying service of eligibility—"The Hindu".	W22	1 46 '2005	Xerox copy of the Pay Slip of T. Sekar for the month of February 2005 wait list No. 395.
W6	15-03-97	Xerox capy of the Chérmai Zonal Office letter about filling up of vacancies of sauctioned massenger posts for the years 1995 & 1996.	W2 3	13-02-95	Xerox copy of the Madurai Module Circular Letter—engaging temporary employees from the panel of wait list.
W 7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger	W 24	09-11-92	Xerox copy of the Circular No. 28 Norms for sanction of messenger staff.
		vacancies and filling them before 31-3-97.	W25	09-07-92	Xerox copy of the Minutes of the Bipartite Meetting.
W8	N⊓	Xerox copy of the Casuals should not be engaged to do messengerial work— Reference Book on Staff matters (consolidated upto 31st December, 1993)	W26	09-07-92	Xerox copy of the Settlement for implementation of norms creation of part time general Attendants.
W 9	07-12-84	Xerox copy of the service certificate issued by Thousand Light Branch.	W27	07-02-06	Xerox copy of the Conversion of part time corployees and designate them as General Attendants.
W 10	14-08-96	Xerox copy of the service certificate issued by Ayanavaram Branch.	W28	31-12-85	Xerox copy of the Staff circular : PER/ IR/88/85—Tempprary employees.
W11	12-02-96	Xerox copy of the service certificate issued by Anna Nagar West Branch.	For the Respondent/Management:—		ent/Management :
W12	31-06-97	Xerox copy of the service certificate	Ex. No	o. Date	Description
	20.04.00	issued by Nungambakkam Branch.	Mi	17-11-87	Xerox copy of the settlement.
W 13	03-06-97	Xerox copy of the service certificate issued by Saidapet Branch.	M2	16-07-88	Xerox copy of the settlement.
W14	NI	Xerox copy of the Reference Book on	M3	27-10-88	Xerox copy of the settlement.
		Staff Matters consolidated upto 31-12-1984 Volume II Chapter LXVII—	M4	09-01-91	Xerox copy of the settlement.
		Temporary employees in the subordinate cadre—Guidelines.	M5	30-07-96	Xerox copy of the settlement.
Wt5	Mil	Xerox copy of the Reference Book on Staff matters consolidated upto	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
		31-12-1993 Volume II, Chapter 39— Guidelines for appointment of temporary	M7	28-05-91	Xerox copy of the order in W.P. No.7872'91.
W[6	06-03-97		MB	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
927897	A6 00 00	Zonal Office for interview of messonger post—V, Muralikannan.	M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W17	06-03-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.	MIO	Nik	Xerox copy of the wait list of Trichy Module.
Wi8	06-03-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messanger post—J. Velmurugan.	MII	25-10- 99	•Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99.

नई दिल्ली, 19 जुलाई, 2007

का,आ, 2177.— औद्धोगिक विवाद अभिनियम, 1947 (1947 का: (4) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट मैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण:अम न्यामालय, चेनई के पंचाट (संदर्ध संख्या 249/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 जी प्राप्त सुआ था।

[सं एल 12012/45]/98-आईआर(बी]) (अजय कुमार, द्वेस्क अधिकारी

New Dolhi, the 19th July, 2007.

S.O. 2477.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 249/2004) of the Central Government, Industrial Tribunal contrated by the Central Government in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

(No. L-12012/451/98-IR (B-III)

AJAY KUMAR, Desk Officer

ANNEXURE,

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

> Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 249/2004

(Principal Labour Court CGID No. 188/99)

(In he matter of the dispute fire adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri. J. L. Altexander

: 1 Party/Petisioner

AND

The Assistant General Manager, Il Party/Management State Bank of India.
Z. O. Changan.

APPEARANCE

For the Petinjoner

: Sri V S. Ekamburarn,

Authorised Representative

For the Management

: M/s, K. Veeramani.

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. 1, 12012/451/98-IR (B I) dated 12-3-1999 has referred this dispute earlier to the Tamit Nado Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 188AP and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGTF cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it us I.D.No. 249/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman ShriM, Dhansunj, wait list No.461 for restoring the wart list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Peritioner was sponsured by Employment Exchange for the post of sub-staff in Class IV undre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tamburam branch from 9-6-1984. The Petitioner was orally informed that his services. were no more required. The non-employment of the Peritioner and others became subject matter before Supreme. Court in the form of Writ Perition filed by State Bank Employees' Union in Watt Petition No. 542/87 which was taken up by the Supreme Count. The Respondent/Hank, in addition to its counter, filed a copy of sentement under section 18(1) reached between management of Stare Bank. of India and All India State Back of India Staff Federation and the sculenger) is with regard to absorption of Class JV. temporary workmen who were centled employment after 1985-86 were classified to the settlement was under enosideration once again and they classified the workmen. under three categories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brough: to the notice of the Petitioner about the interview. to be held through advertisements. The Petitioner also Submitted his application in the prescribed format through. Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result. of interview and also with regard to appointment. But, the Petitioner was informed estably to join at the branch where he initially worked as a class IV employee. From Omober, 1981, the Petitioner has been working as a remporary messenger and sumetime performing work in other branches. also. While working on temporary basis in MRI, branch, another advertisement by the Respondent/Bank was made regarding caseal workers who were ireported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on [34-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Hank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service. in due course. The Respondent/Bank (ook up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of semiement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular. service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the previsions of Para 522(4) of Sastry Award, Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the matructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to untain labour practice. The wait list suffers serious infirmities and it is out based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govt, for unjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioper is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as thessenger and such engagements were prevailing from the year 1970 cowards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff. Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation. proceedings and minutes were drawn under section 18(3): of J.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.720 in wait list. of Zonal Office, Chennai. So (at 357 wait fisted temporary) candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary. messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed, Under the settlement, employees were categorised as A, B and C. Considering their remporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upro 31-12-1994. The Petitioner has no validand enforceable right for appointment. The Respondent had implemented the volumery retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not inregular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 720 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conference) Act. 1981. does not apply to Respondent/Hank and this Tribunal has no jurisdiction to cotartain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitiones. contended that he was baving been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Feddration were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions taid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 1872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 737 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment

- thereupon as temporary messenger is justified?"
- i) "To what relief the Peritioner is entitled?".

Point No.1:

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for injerview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary. basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Cours to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank. and has been marked as Ex. Mt. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected to the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute inthe year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstarement with back wages and other attendant benefits.
- 9. On behalf of the Peritioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any seulement in this regard is redundant and in any case. the Petitioner is not bound by semiement under section. 18(1) entered into between the alleged Pederation and the Respondent/Management. They further contended that though the Respondent/Hank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous. service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the

Peritioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retreached messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies. but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Peritioner from the beginning linking his future with the settlements. Further, Clause Pof Ex. M1 deals with categorization of retrenched temporary employees into 'A. B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go" or first come · last go" and therefore, the categorization in Clause + is illegal. Clause 1 (a) of Ex.M1 provides an apportunity to persons who were engaged on casual basis. and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water hoys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals in do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jubs etc. are strictly prohibited as per bank's circulars/justructions. In such direumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial weatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as perinstructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10. in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was orepared based on the settlement dated 17-11-87, 27-10-88. and 9-1-9) which are marked as Ex.Ml, M3 and M4. respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was

not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his baid statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon ble High Court has held in its order dated 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 actilement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category. who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Purther, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpension by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees to the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution. of India. Therefore, the Petitioner contended that preparation of Ex.M i namely wait list is not inconformity. with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order to WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held. at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunat marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at

the time of initial appointment that their appointment was in leave viscancy. Further, even before or after the settlement. on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the priveipal clause 2 (65) of the LD. Act, 1947. Though the Petitioner's work in the Respondent: Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the tollings reported in 1985 4 SCC 201 LLD. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badiles' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have produity over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Fx. M4 states that candidates found suitable for permanent appointment. will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails. to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Hank has not produced any document show how he has arrived at the sedionty and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala. fide and Blegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporarly employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central). Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of 2x M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP. No.11932/91 to W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any hearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5.

Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it. was implemented only in the year 2001 and it constitutes: post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retreachment from service is: illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits. under the provisions of I.D. Act, it is further contended on behalf of the Petitioner that though some of the Petitioners. m the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 24ff days in a period of 12 calendar months. He also relied on the rulings reported in $1985~\mathrm{H}_\odot$ ILI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V_{K} MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'entually worked under the employer "cannot mean that those days." only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters. produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and salected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as: sub staff in early 1990s but were denied further engagement. on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the

provisions of law and implemented by the Respondent Bank and the claim of the Petitioners are not bounfide and are made with obserior motive. Purther, they have concealed the material facts that the Peritioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. V4. INDUSTRIAL TRIBUNAL A.P. AND O'(HERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribonal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the seulement reached in the course of conciliation is vitiated by froud, misrepresentation or coercion, the settlement is binding on the workmen." Learned coupsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS VS. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the sentement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a sentiment in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 | LLJ 308 K.C.P. LTD. Va. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A sentement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on for contesting workmen also." He further relied on the oalings reported in AIR 2000 SC 469 NATIONAL ENGINEERING ENDUSTRIES LTD. Vs. STATE OF RAIASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is surlived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bors fide in maters or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations. as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contraded that though it is alloged that they are not parties to the actricment, since the federation in which the Petitioner is also one among them, they have entered into scittement with the bank and therefore, it is binding on the Petitioner. Purther, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and be is estopped from disputing the SALTIE.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected dispotes is 'whether the demand of the wextman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrinchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to-see whether the restoration of wait list can be rande as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of temblility of a reference and he relied on the rulings reported in 1998 LAB K: 345 SECRETARY. KOLLAM JILLA HOTEL AND SHOP WORKERS UNBON Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Coun has held that "mere wording of reference is not decisive in the matter of temblility of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find our some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the muchinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitio per to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LABIC 1664 VANSAGNATHAN ORIENT PAPER MILLS Va INDUSTRIAL TRIBUNAL & ORS. wherein the Madbya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the chlings reported in 1998 LAB IC 1507 A. SAMBANTHAN 🕼 PRESEDING OFFICER, I. ABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical minuser or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 549 the Supreme Court has held that "The Tribural" has jurisdiftion to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should donaider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labout Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and aberefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner & entitled to be reinstated in service as alleged by him and whether he is emitted to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference id without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given so him or not? But, I find that the settlement was validly entered into between the Respondent/Hank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept if the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he

should be reinstated in service and he relied on the miljnes. reported in 1996 3 SCC 139 LINION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Gove service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining selectors, were given appointments according to their comparative merits. In which, the Supreme Court has held. that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 19976SCC584SYNDK:ATE BANK & ORS Vs.SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its fetter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment. in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption. in the services of the bunk. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, miscenceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the ralings reparted in 1991 3 SCC 47 SHANKARSAN DASH 🕖 UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Under such discumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the tulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hor temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is

available for him which means creation of a vacancy; (b) he was not aponagred by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door, (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in pure 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the merecontinuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends to several years. Further, there can be no rule of humb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant. facts and circumstances of that case. It cannot be a mechanical act but a ludicious one. From this, the impuesed directions must be held to be totally untenable and unsustainable. Thus, the Successe Court set aside the orders. of Lower Courts. He further relied on the decision reported. in 1997 ILSCC I ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed sandidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sauctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a mility." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against. any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not emitted to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHID KUMAR VIDYAKTHI & OKS V£ STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these

circumstances, their disengagement from service cannot be construed to be a netrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rainsthan High Court has held that "Under Section 25G of the LD. Act retrencionent procedure following principle of "last come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining junious. Though in this case, the Petitioner has alloged that his junious have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Brak is ready to establish the fact before this. Tribunal that he has worked more days than the Petisioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank campot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Segior Advocate further argued that even. in recent decision reported in 2006 4 SCC | Secretary, State of Kamataka Vs. Uma Devi, the Supreme Court has held that metely because a temporary employee or a causal wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorted in regular service or made permanent merely on the strength. of such continuence, if the original appointment was not made by following a due process of selection as envisaged: by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees. whose period of employment has come to an end or of adbut coupleyers who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the camployment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to else out his livelificad and accepts. whatever he gets. But on that ground alone, it would not be appropriate to justison the constitutional scheme of appointment, perpeniate illegalities and to take the view that a person who has temporarily or casually got comployed. should be directed to be continued pertainently. By doing so, it will be creating another mode of public appointment. which is not permissible." Further, the Sopreme Court while laying down the law, has eleady held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on

the strength of such continuance, if the original appointment was not made by following a due process of selection as caviaged by relevent rules. Further, in CDJ 2006 SC 443 National Pertinents Ltd., and Others Vs. Somvir Single. wherein the Supreme Court has held that "regularisation" furthermore, is not a mode of appointment and if **appointment is made without following the rules, the same** being a reality, the question of confirmation of an employee appen the expliry of purported period of probation would notarise." Partier, in CD1 2006 SC 395 Municipal Council., Sugaspur Vs. Surinder Kamar, the Supreme Court has held. that "it is not disputed that the appointment of the Exappondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its complayees what bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in **violation of constitutional** scheme entirely under Article 14 and 16 of the Constitution of India would be void in law." Purtier, in 2006 2 LLN 89 Maditya Pradesh State Agro Industifies Development Corporation Vz. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer my legal right upon him to be regularised in service." The Supreme Court size held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Covernment in the wate of prevailing context economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Rélying en all these decisions, learned counsel. for the Respondent contended that since the Peritioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Purther, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not emitted to dispute the same and they are estopped from doing to. Purther, their prayer before the labour authorities was only to restore the wait list and also for appointment. thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait fint and also settlements entered into between the Respondent Bank and Pederation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement

and they have not alleged that sentement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this. Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in mature and hence, the Petitioners are cutified for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Peritioner is entitled?

20. In viewed my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work. I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st Juneary, 2007)

K. JAYARAMAN, Presiding Officer

Witness Remined:

For the Petitioner

WW1 Sri J. L. Alexander WW2 Sri V. S. Ekamberam

For the Respondent MW1 Sri C. Mariappen

MW1 Sri C. Manappaa MW2 Sri C. Ramalingam

Documents Marked :-

Ex. No. Date

Description

W1 1-8-88

Doeserpaca

Xerox copy of the paper publication in daily Thanthi based on Ex. M3.

				HOLY MENNEY 1.	7, 1727 493 9
W2	20-4-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank	W 19	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi
W 3	24-4-91	for implementation of Ex. M1. Xerox copy of the circular of Respondent/Bank to all Branches	W20	31-3-97	Xerox copy of the appointment order to Sri G. Pandi
		regarding absorption of daily wagers in Messenger vacancies.	W21	Feb. 2006	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W4	1-5-91	Xerox copy of the advertisement in the Hindn on daily wages based on Ex. W4.	W22	13-02-95	Xerox copy of the Maduria Module
W5	20-08-91	Xerox copy of the advertisement in The kindu extending Period of qualifying			Circular lotter about Engaging temporary employees from the panel of wait list
W6	15-3-97	service to daily wagers. Xerox copy of the circular letter of Zonal Office, Chennai About filling up of	W23	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W 7	26.109	vacancies of messenger posts.	W24	09-07-92	Xerox copy of the minutes of the Biparrite
₩,	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97,	W25	09-07-92	meeting. Xerox copy of the settlement between Respondent/Bunk and All India Staff Bank of India Staff Federation for
W8	NIL	Xerox copy of the instruction in Reference book on staff about casuals not to be sugaged at office/tranches to			implementation of norms-creation of part time general attendants.
wg	10-12-84	do messengerial work. Xerox copy of the service certificate issued by Mannadi Branch.	W26	07-02-06	Xerux copy of the local Head Office circular about Conversion of part time employees and redesignate them as
W 10	5-8-88	Xerox copy of the service certificate	W27	31-12-85	general attendants. Xerox copy of the local Head Office
WII	8-8-88	issued by Mannadi branch. Xerox copy of the service certificate issued by Perambur branch.			circular about Appointment of temporary employees in subordinate cadre. For the Respondent/Management:
W 12	Ni	Xerox copy of the statement showing number of Days the Petitioner worked.	Es. N	o. Date	Description
W13	Ni	Xerox copy of the administrative	MI	17-11-87	Xerox copy of the settlement.
		goldelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.	M2	16-07-88	Xerox copy of the settlement.
			M3	27-10 -8 8	Xerox copy of the settlement.
			М4	09-01-91	Xerox copy of the settlement.
W14	Nii	Xexux copy of the Reference book on	M5	30-07-96	Xerox copy of the settlement.
		Staff matters Vol. III consolidated upto 31-12-95	MS	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W15	63-97	zonal office for interview of messenger	М7	28-05-9 1	Xerox copy of the order in W.P. No.7872/91.
N 16	06-03-97	post—V. Moralikaman Xerox copy of the call letter from	M8	15 -05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
		Madurai zonal office For interview of messenger post—K. Subburaj	M9 ∹	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
V 17	06-03-97	Xerrox copy of the call letter from Madurai zonal office For interview of messenger post —J. Velmanugan	M10		Xexox copy of the wait list of Chennai Module.
		kost —s. semminkan	M()		Xerox copy of the under passed in CMP No. 16289 and 16290/99 in W.A. No.

नई दिल्ली, 19 जुलाई, 2007

का,आ, 2178.—औरक्रीणक विवाद अधिवियम, 1947 (1947 का 14) की धारी 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनको कर्मकारों जो बीच, अनुबंध में निर्दिष्ट औरक्रीणक विवाद में केन्द्रीय सरकार औरक्रीणक अधिकरण, चेत्रई के पंचाट (संदर्भ संख्या 248/2004) को प्रकाशित करती है, जो सोन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. एस-12012/447/98: आईआर(की 1) | अजय कुमार, बेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2178.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 248/2004) of the Gentral Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Cennal Government on 19-7-2007.

[No. L. 12012/447/98-18 (B-1)]

AJAY KUMAR, Desk Officer

ANNEXLIRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st Javanary, 2007

PRESENT:

Nhi K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 248/2004

(Principal Labour Court CGID No. 187/99).

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial/Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sr. M. Dhanqsuraj

: I Party/Peritic ocr

AND

The Assistant General Manager: : II Party/Management State Bank of India,

2. O. Chennai.

APPEARANCE:

For the Petitioner

: Sri V. S. Ekambaram,

Authorised Representative.

For the Management

: M/s. K. S. Sundar.

Advocates.

AWARD

 The Central Government Ministry of Labour, vide Order No. L-120:2/447/98 (R (B-I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chennai and the said Labour Court has taken the dispute on its file as CGID No. 187/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 248 /2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Dhanusuraj, wast list No. 461 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petitioner in the Claim Statement are briefly as follows.

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messeager after an interview and medical examination. He was appointed on temporary basis at Tamharam heanth from 9-6-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme. Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter. filed a copy of settlement under section 18(1) reached between management of State Bank. of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen. under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tambaram branch. He was called for an interview by a Committee appointed by Respondent/ Bunk in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed urally to join at the branch where he initially worked as a class IV employee. From 9-6-84, the Petitioner has been working as a temporary messenger and 🚁 some times performing work in other branches also. While working on temporary basis in Tambaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in servace during the same period. While the Petitioner was working as such, the Manager of the branch informed the Potitioner orally on [31.3 1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Peritioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of noconsequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement. speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and funcies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of perty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular coupleyment in Respondent/Bank with all attendent benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govi, for adjudication by this Tributal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bons fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3). of I.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 461 in wait list of Zonal Office, Chennai. So for 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave varancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the scalement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in may calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The poculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies, in terms of aforexaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 461 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estupped from questioning the settlements. directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements : and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to extertain such plear. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was

discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be falled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wagers was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- 5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is dury bound to regularise the services of the Pelitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner(be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are countary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be pissed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 461 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

- B In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them interminently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a seulement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MI. The Petitioner in this case and the Petitioners in the connected cases attacked this sculement as it is not binding on them the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have ruised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and itlegal and they further prayed for reinstatement with took wages and other attendant benefits.
- 9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Peritioner is not bound by settlement under Section (8) entered into between the alleged Pederation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank in the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the J.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. I carned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is unitenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.Ml and the avernoons of MWI and MW2 and their testimenies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his funne with the settlements. Further, Clause 1 of Bx. M.I deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of "last come—first go" or first come—last go" and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, famabes, cash coolies, water boys, sweepers ete "for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, Copy of which is marked as Ex.W8. Further, the appointment of thilly wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of casuals along with the eligible canegories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the maner of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Bx M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Mi, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Purther, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Scattement while the 1988 scalement dealt with daily wager to Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Responden are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averagest of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpendical by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW I wait fist under Ex M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as is the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 15 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Forthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the hist of successful candidates pursuant to the first advertisement published in The Hindo dated 1-8-88. Forthermore, west list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days pat in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been propered in violation of instructions and ceased to have the credibility strached to the wait list. Above all, Ex. M. I was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Purther, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (nn) of the 1.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated Further, the representative of the Petitioner relied on the rutings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority In the begal sense, since the selected candidates with tongest service should have priority over those who joined the service letter and therefore, the wait fixt under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in other violation and in breach, of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanely appointment will be offered appointment against existing future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank The Respondent/Bank has not 'produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioned who was in regular service of the Respondent/ Bank is advirary, male fide and illegal and the Respondent/ Bank has not acted in " accordance with the terms of scalement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central). lfyddrahud, ir is neither a 18(3) sestlement nor (2(3) schlemen(as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Mudras in WMP No. (1932/9) in W.P.No. 7872/91 coased m have any relevance when the main writhas been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the sentements which are marked as Ex. M1 in M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and bence evidence

of Respondent/Bank has no application to the Pelitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benearts under the provisions of 1 i). Acr. It is further contentled on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and honce, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer' cannot mean that those days only when the workman worked with nammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been poid wages either under expression implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and discefore, their retrenchment is illegat. lo all these cases, the Peritioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 340 days and more in a continuous period of 12 calendar months and they are in ago group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribanal has to pass an award in their

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circurastances of the case. The Petitioner in this case and the Politioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estepped from making claim as they had accepted the settlements drawn ander the provisions of Section 18(1) and 18(3) of the ID. Act, in heu of the provisions of law and implemented by the Respondent Bank and the claus of the Petitioners are not hunafide and are made with alterior motive. Further, they have concealed the material facts that the Petitioner was want fixed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The semicment entered into by the Respondent/Rank and the federation were honaside which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the sendement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any uniter and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 1 1 LJ 323 ASSOCIATIOD GLASS. INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL, A.P., AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 1: workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea be ore the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that his the absence of plea that the settlement reached in the course of conciliation is viriated by fraud, misrepresentation or coercion, the settlement is binding on the workners. "I earned counsel for the Respondent further relied on the rulings reported in 1997 ITLLI 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that Therefore a settlement arrived at in the course of the conculiation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected. to the same. To that extent, it departs from the ordinary law. of contracts, the object obviously is to uphold the sanctity. of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from sentling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLI 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two ವಿಚ್ಚಾಗಿಗಳು namely (i) those arrived at outside the conciliation. proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and semienters; of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a

representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the, rulings reported in ATR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is: a pointer to there being good will between them. When there is a dispute that the settlement is not benefide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitiolier. Further, he argued that no union of the bank has questioned the settlement. and in such discumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further comended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for reading the wait list of temporary messengers in the establishment of Respondent/Bank and consequential' appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alteged by the Petitioner in the Claim Statement.

But, as against this on behalf of the Petitioner it is: contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JULA HOTEL AND SHOP WORKERS LINKON Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refering to answer the reference on merits." Further, he argued that the Tribunal has got power to go imo the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. MIDUSTRIAL TRIBUNAL & ORS. wherein the Madnya Problesh High Court has held that "the Tribunal **estable go beared the terms of reference, but that does not** mean that it cannot look into the pleadings of parties." He also relied do the rulings reported in 1998 LAB IC 1507. A. SAMBARTHAN Vs. PRESIDING OFFICER, LABOUR. COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not **arretropt to equalder the order under reference in a technical FRANCES OF a peclantic manner**, but should consider the order. of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SIC 569 the Supreme Court has held that "the Tribunal had jurisdiction to consider all incidental matters. also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference. is not happilly framed nor was it framed to the highexpectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleaftings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the !carned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in aervice and he relied on the rulings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS V. K.V.VIIEESH wherein the Supreme Coun has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Oovernment service in

an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of hottom. persons were removed from the select list and the remaining selectors were given appointments according to their comparative ments. In which, the Supreme Court has held that "m such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme. Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel. was not to confer on them any sight to seek permanent. appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion: that the Respondents did not get any right because of inclusion of their names in the said panel for permanent. absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the tearned Single Judge and the Division Beach, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings. reported to 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible." right to appointment even if a vacancy exists? and relying on all these decisions, learned counse) for the Respondent. contended that since the Peritioner has no right to question. the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it connutbe said that preparation of wait list was made with malafide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should. be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc / temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange not was helappointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional

problems indicated by us in part 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Farther, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be beld that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugued directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Beach of the Supreme Court has considered the above regularisation of appointment in excess of sauctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-boc basis against an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in fullity. It would amount to decorating a still born beby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nutlity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the milings reported in AIR 1997 SC 3657 HTMANSHU KUMAR VIDYARTHI & ORS VS. STATE OF BIHAR AND QRS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under those circumstances, their disengagement from service cannot be construed to be a cetrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the 1.D. Act retrenchment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and remining junious". Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his jumors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such direamstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Peritinger and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has beld that "merely because a temporary employee or a casual wage worker is continued for a time beyond the tern of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely off the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-bnc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open cyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to ake out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued. cermanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court while laying down the law, bas clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if . the original appointment was not made by following a due process of selection as envisaged by relevant rules.** Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD AND OTHERS Vs. SOMVIR SINGH, wherein the Sugreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a mulity, the

question of confirmation of an employee upon the exploy of purported geriod of probation would not arise." Further. in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KEMAR, the Supreme Court has held that "it is not displated that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any retruitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16. of the Constitution of India would be void in law," Further, in 2006 21,1,10 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION V_8 , S.C. PANDEY wherein the Supreme Court has held that forly because an employee had worked for more than 240 days. of service by that itself, would not confer any tegal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent derisions of this court probably having regard to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation. privatisation and outsometing is evident, in view of the scaled legal position, as noticed hereinbefore "

Relyting on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not confided to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the proparation of wait list or number allowed to them. Under such circum dances, it cannot be questioned by the Petitioner.

17 I find much force in the contention of the learned. counsel the Respondent. Though in the Claim Statement, the Petitioners[have made so many allegations, with regard to preparation of wait list and also sentlements entered into between the Respondent/Bank and Federation, at the time of reference, elley have not questioned the settlement nor the number allotted to each individual in the wait list Forther, the Pelitioners have not questioned the sertlement and they have not alleged that settlement was not a bong ride in nature or it has been arrived at on account of mala. fule, misrepresentation, fraud or even compution or other inducements. Under such eireumstances, I find the Petitioners carpot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary

employees to be absorbed, I find the Peririoners cannot claim for reinstatement or regularisation in services of the Respondent /Bank

(8) Further, the representative for the Peritioner contended that to a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Peritimers are entitled for the same relief.

19. But I find since the Supreme Court has held that temporary employees are not actified to claim any rights for regularisation, merely because they have completed 740 days of continuous service in a period of 12 calendar months and the Supremi Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to be changes in the policy decisions of the Govt, in the wake of prevailing market exchange, globalisation, privansation and autourcing is evident. I find the Petitional is not emitted to claim regularisation or reinstatement in the Respindent/Bank as alreged by him. Therefore, I find this point against the Petitionar

Point No. 2:

The next point to be decided in this case is to what relief the Pointoner's amin on?

20. In view of my foregoing findings that the Pecitioner is a temporary employee and the synon entitled in be absorbed in regular service or made permanent merely on the strength of such continuously of work. I find the Petitioner is not entitled to any relief as claimed by him. No Cests.

Thus, the reference is answered accordingly.

(Diersaczliu the P.A., tenescribed and typed by him, concered and pronounced by line in the open court on this day the 31st January (2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW: Sti M. Dhansuraj

WW//Sn/V.S. Ekambaranji

For the Respondent MW? Sri C Mariappan

MW2 Sri C. Ramalingam

Descriptions

Documents Marked :-

Ex. No. Date:

		Consolitations
WI	01- 08-8 5	Xerox copy of the paper publication in durly Thanth? hasert on Ex. ML
W.G	215/14-68	Xerox copy of the administrative guidelines issued by respondent/Bank for implementation of Ex. M1.

Will 24-04-9! Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Xerox copy of the wait list of Chemai.

No.16289 and 16290/99 in W.A. No.

Module.

1893/99.

M11 25-10-99 Xerox copy of the order passed in CMP

W20 06-03-97 Xerox copy of the call letter from Madurai

post-J. Velmurugan.

Velmurugan.

W21

17-03-97 Xerox enpy of the service particulars J.

zonal office For interview of messenger

_ माग ।	<u> </u> खण्ड 3	(छ)] भारत का सभयत्र : अगः	स्त 4, 200	17/ 384 01 [3	, 1929 4949
W4	01-05-91	Xerox copy of the adventsement in the Hindu on daily Wages based on Ex. W4.	W22	25-03-97	Xerox copy of the letter advising selection of part time Menial -G. Pandi.
WS	20408-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying	W 23	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W6	15-03-97	Office, Chemai About filling up of	₩ 24	Feb. 2005	Xerox copy of the pay stip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Cerole.
W7	25-02-97	Respondent/Bank to all Branches	₩25	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
		regarding identification of messenger vacancies and filling them before 31-3 97.	W26	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger shaff.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to	W27	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W 9	09-03-87	do messengerial work. Xeros copy of the service certificate issued by Tamboram Branch.	W28	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for
W10	Nil	Xerox copy of the service certificate issued by Tambaram branch.			implementation of porms-creation of part time general attendants.
WII	27-05-88	Xerox copy of the service certificate issued by Tamburam Airforce station branch.	W29	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W12	20-08-92	Xerox copy of the service certificate issued by Tambaram APS branch.	W30	31-12-85	Xerox copy of the local Head Office circular about Appointment of
₩13	(4-01-94	Xerox copy of the service certificate issued by Guiody Branch.	•		temporary employees to subordinate cadre.
W [4	01-01-95	Xerox copy of the service certificate	For the Respondent/Management :-		
W15	30-12- 96	issued by Meenambakkam Branch. Xerox copy of the service certificate	Ex No	. Date	Description
1.1.7	207-12-50	issued by Meenambakkam Branch.	MI	17-11-87	Xerox copy of the settlement.
W16	NiL	Xerox copy of the administrative	M2	16-07-88	Xerox copy of the settlement.
		guidelines in reference book on staff matters issued by Respondent/Bank	MB	27-10-88	Xeroa copy of the settlement.
		regarding recruitment to subordinate	M4	09-01-91	Xerox copy of the settlement.
		care and service conditions.	M5	30-07-96	Xerox copy of the settlement.
۲į	NE	Xerox copy of the reference book on Staff matters. Vol. III consolidated upto 31-12-95.	М6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W18	06-03-97		M 7	28-05-91	Xerox copy of the order in W.P. No.7872/91.
	ar na na	post-V. Muralikannan.	M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M19	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post-K. Subburaj.	м9	10 -07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.

MIO NE

नई दिल्ली, 19 जुलाई, 2007

कर, अ.इ. 2179. - औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की शास 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बेंक ऑफ इण्डिया के बंबधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुषंघ में निर्देष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अर्थ न्यायालय, चेंबई के पंचाद (संदर्भ संख्या 231/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं एल-12012/434/98-आईआर(बो-1)] अजय कुमार, बेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2179. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 231/2004) of theiCentral Government Industrial Tribunal-tum-Labour Coupt, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-120] 2/434/98-TR (B.[)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT:

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 231/2004

(Printipal Labour Court CGID No. 150/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sti G. Murugan

: I Party/Petitioner

AND

The Assistant General Manager, : Il Party/Management State Bank of India,

Z. O. Chermai

APPEARANCES

For the Pentipner

 Sri V. S. Ekambaram, Authorised Representative.

For the Management

 M/s. K. S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, wide Order No. L-1 2012/434/98-TR (B-I) dated 10-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 150/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as L(),No. 231/2004.

The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri G. Murugan, wait list No. 557 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cades in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Pallavaram branch from 1-9-1983. The Petitioner was orally informed that his services. were no more required. The non-employment of the Petitioner and others became subject matter before Supreme. Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation. and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed formar through Branch Manager of the Pallavaram branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Peritioner was informed urally to join at the branch where he initially worked as a class IV employee. From 1/9.1983, the Pelitioner has been working as a temporary messenger and some time performing work in other branches also While working an temporary basis in Service branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not

required any more and he need not attend the office from 1-4-97. Hence, the Petitioner mised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Peritioner, he has made a fresh representation to Govt, to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Patitioner only in temporary services after the sentement. The Peritioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitiones was not a party to the settlement mentioned by the Respondent/Bank before the constitution of licer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Perisioner is against the provisions of Para 522(4) of Sastry Award. Event though the settlement speaks about three categories only a single want list has been prepared and the Respondent/ Bank has been regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of perty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt, for adjustication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bong fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was expoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject moster of conciliation proceedings and minutes were drawn under Section \$8(3). of I.D. Act. Interms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 553 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrendument provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the sentiement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 35 calendar months and under eategory (C) the temporary employees. who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniotity in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the out off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Letirioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacanties and not in regular permanent vacancies. In resma of aforesaid settlements, out of 744 wait listed caudidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 553 he was not appointed. The said sertiements were bone fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the sentlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. (5.31) does not apply to Respondent/Bank and this Tribunal bas. no jurisdiction to entertain such pies. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per sertlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of faily wayes/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has accolain for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

Note the additional clasm statement, the Petitioner contended that he was liaving been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteriu set out ig the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV poli. He was engaged in the messenger post in the sub refinale carire of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petinstein as he has acquired the valuable right ensarined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a directar to the effect that quider no giret, natances, was listed persons like the Pertisioner he engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment, Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberatety delayed in filling up the vacancies by the wait. Exical workmen with alterior mative. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons officer than wait listed workmen according to their whites and fancies. Hence, the Petitioner prays that an award may be passed in his tallour.

- 6. Again, the Petitioner filed are joinder to the Country Statements of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India 5th/f Pederation were under section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class 1V staff in the Respondent/Bank is in accordance with the instructions is aid to we under codified circulars of the Respondent/Bank lives in the Writ Petition before the High Court in W. 1, No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is faise to allege that in : settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7 In these parameteries, the points for my consideration are:
 - (i) "Whether the demand of the Peritinner in Wast Lest No. 557 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having over, selected and wait iisted in terms of the relevant guideline school dass of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary liagis. After engaging them intermittently for some years. the Petitioner in this case and other Peririoners in the connected disputes were terminated without any notice Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Wist Petition. No. 542 (Civil) 1987, the Respondent/Bank harriedly antered into a settlement on the issue of absorption, of temporary employees and filled it before the Supreme Court at the time of final hearing of the Wrst Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as 1/x. Ml. The Peritioner in this case and the Petitioners in the connected cases attacked this semientern as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation of notice demed an opportunity to work in the bank after 31.3 1997 and therefore, they have raised the dispute in the year 1997 before the tables authorities and they questioned the remeation out as unjust and illegal and they further pray(s) for reenstatement with back wupes and other arreisdam benefits.

On Schalf of the Petitioner, it is contended that: plese Peritioners were retruited as lemporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management, They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circular-viguidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner wesking for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and a is preposternus to contend that the Perisioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Politioners who are retrenched messengers

and are eligible to be reinstated. I carned sepresentative for the Petitioner contemded that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V. A of the (.1). Act providing for retrenchment is not enacted only the the honefit of the workmen to whom Section 25F applies tact for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Peritioner has no vulid and enforceable right for appointment is unrenable. It is further contended that on behalf of the Petitioner that \mathbb{R}^n W2. W3 and WS as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the sentements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonics during the cross-examination will clearly show how the bank has gaven a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into $^{\circ}A$, B and C° , but this categorization of $^{\circ}A$. $\mathbb{R} \otimes C^*$ is quite opposed to the doctrine of flast come — first go for 'tirst come-- last go' and therefore, the categorization in Clause I is illegal. Clause I(a) of Ex MI provides an apportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, each coolies, water boys, sweepers etc. For absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Fx.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prehibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial meanment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bunk has alleged to have prepared only one wait list for each module as per Ex.M 10. in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to suy as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml. M3 and M4 respectively. But, when MWI has spoken about the settlements, he deposed that settlement dated 27:10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hen ble High Court has held in its order dated 23-7-99 in W.P.No, 7872 of 1991, which is marked as an exhibit, in which it is stated that fit is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such eireumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 sentement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the avenment of MW1 and the statements in Counter Statement are commany to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals, it is further contended on behalf of the Peririoner that as per deposition of MW1 wait list under Ex M10 comprises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the caxuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of Inflia. Therefore, the Perinoner contended that preparation of Ex.M I namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait tist was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1 R-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive lat their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Mudurat and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment. that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave



vaggages was used as a device to take them out of the principal clause 2 (on) of the E.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH V_{S} , RESIMIVE BANK OF INDIA AND OTHERS wherein the Supreme Cours has held that "us employ workmen as "taxilies" equals or temporaries and to continue them as such for many years with the object of depriving them of the status and provileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait first has not been prepared in accordance with principle of seniority in the legal sense, singe the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bud in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, hur in case vibration and in breach of it. Though clause 2(e) of Ex. M4 states that caudidates found suitable for permanera appointment will be offered appointment against existing/future vacancy anywhere in module of circle and in case, a candidate fails to accept the offer of appointment or paying within the prescribed period, he will be deemed to have related it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any decument to show how he has arrived at the seniority and till date, it is a my creaty as to who that senior was and there is 'no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Perinimen who was in regular service of the Respondence Bank is arbitrary. mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has precluded Ex. Mit which alleged to be a body of mispules of conciliation proceedings dated. 9-6-75 before Regional Labour Commissioner (Central). Hyderabad, it is neither a 18(3) settlement not 12(3): settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M! to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Lx, M3 and M11 interim orders passed by High Court of Madrak in WMP No.11932/91 in W.P No.7872/91 ceased to have any relevance when the main writhas been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/Management has examined two witnesses, the deposition of management watnesses during the cross examination had become apparent that they have no personal knowledge about the sentements which are marked as Ex. M1 to M5. Above all, though the Respondent/Block has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it egostitutes post reference pariod and nonce evidence

of Respondent/Bank was no application to the Petitioner's case. The Peritinners have completed the solvice of 240 cays and more in a continuous period of 12 calendar menths as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 75. and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are enritled to the benefits anxier the provisions of LD. Act. It is further contended on behalf of the Pentioner that though some of the Petitioners in the connected LTDs, have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petinoners have acrually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the julings reported in 1985 II IIII 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION \mathbf{V}_{S} . MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer" cannot mean that those days. unity when the worldmen worked with namines, sickle of perbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call fetters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submisted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were decied further engagement on account of sertioments/sapsing of wait hyly and out of these Peririoners some of them have completed 240 days and more in a continuous period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault of theirs, may find thomselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their

10. But, as against this, the learned senior counsel for the Respondens/Bank consended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the ease. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointmens/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they lost accepted the settlements drawn ender the provisions of Sections 18(3) and 18(3) of the LD. Act, in lieu of the provisions of raw and implemented by the Respondent Rams and the claim of the Petitioners are not bonafide and are made with offerior mouve. Further, they have conceased the material facts that the Petitioner was wait instead as pet

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 [3.1.1 323 ASSOCIATED GLASS INDUSTRIES LADAVA INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud. misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND UTITERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the contiliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from souttling the settlement." la further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 J LLI 308 K.C.P. LTD. Vs. PRESIDING OF ICER AND OTHERS wherein the Suprence Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of consiliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner, Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counset for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wair list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstand in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstalement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION VS. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the pour workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitional to find out the exact nature of dispute instead. of relusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LAB IC 1664 VAN SAG NATIJAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal" cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He atso relied on the rutings reported in 1998 LAB IC 1507. A. SAMBANTHAN V_R PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not amempt to consider the order under reference in a reclanical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported. in ATR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters. also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and (gasonable manner, though the order of reference is not happily framed not was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued than though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the plendings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

- 13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank. I find the Petitioner is not entitled to question the settlement.
- 14. Then the learned counset for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination. acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select hat on reduction in number of vacancies was made. in view of the empending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a corrain number of bottom. persons were reconved from the select list and the remaining. selecteds were given appointments according to their comparative merits. In which, the Supreme Court has held. that "no such discumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further selled on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that thy sty letter duted 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel. Was not to confer on them any right to seek permanent. appointment in the services of the bank. Considering the Object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of me opinion. that the Respondents did not get any right because of inclusion of their names in the said panel (or permanent) absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, mesconceived and therefore, the learned Single Judge and the Division Hench, when it first decided the appeal were right in dismissing the Writ Periting and the appeal respectively." He further relied on the turness reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held. that "candidates included in merit list has no indefeasible right to appointment even if a vacantly exists" and relying on all these decisions, learned counsel for the Respondent. contended that since the Petitioner has no right in question. the wait list and since there is no male side on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mata fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all these ad-hoc temporary. employees who have continued for more than a year should. be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hog/. temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Pinployment Exchange, not was he appointed in pursuance of a notification calling for applications which means be had entered by a back door. (c) he was not eligible and qualified for the post at the time

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by as in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the merc continuation of an ad-hoc employee for one year, it cannot he presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courty. He further relied on the decision reported in 1997 II SCC LASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bonch of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to he noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad boe basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy. question of regularising the incumbent on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation as given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them. valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contraded that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies. and therefore, they are not entitled to claim any absorption. in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts.

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the L.D. Act respendsment procedure following principle of "last come - first go" is not mandakny bur only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his junious have been made permanent in banking service, he has not established with any evidence that his junious were made permanent by the Respondent/ Bank, Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. in such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of teraporary employees whose period of employment bas come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant. rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme

Cours has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question: of confirmation of an employee upon the expray of purported period of grahation would not arise." Further, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it." is not disputed that the appointment of the Respondent was not in senctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was board to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enstrained under Article 14 and 16 of the Constitution of India would be void in law ". Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION VESIC. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 340 days. of service by that itself, would not confer any legal right. upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Government. in the wake of mevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Fortner, when they have not been questioned the five scattlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list pregared by the Respondent/Bank, they are not entified to dispute the same and they are estopped from doing so Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned. in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wast list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I sind much force in the contention of the learned coursel for the Respondent. Though in the Claim Statement, the Petitioners have made so many altegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number alletted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bone fide in nature or it has been arrived at on account of mala fide, misreptesentation, fraud or even corruption or other inducements. Theder such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank

18. Further, the representative for the Petitional contended that in a similar case, this Tribunal had ordered for rematatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same rebel.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of \$2 calendar months and the Supreme Court has also held that each case must be constacted on its own ment and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Covernment in the wake of prevailing market economy, globalisation, privatisation and outsnowing is evident. I find the Petitioner is not entitled to claim segularisation or reinstatement in the Respondents Bank as alleged by him. Therefore, I find this point against the Petitiopen.

Point No. 2:

The next point to be decided in this case is to what rehef the Petitioner is entitled.³

- 20. In view of my foregoing findings that the Peritagra is a temporary unplayed and he is not emitted to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Peritioner is not entitled to any relief as claimed by him. No Costs
 - 21. Thus, the reference is answered accordingly.
- (Drutated to the P λ , transcribed and typed by him, corrected and presourced by line in the open court on this day the 51st January (2017).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

hor the Potimine.

WW 1 Sm G. Murugan WW2 Sri V. S. Ekambaram

For the Respondent : MWI Sri C. Manappan.

MW 1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked:—

Ex. No. Date		Description	
WI	1-8-88	Xerox copy of the paper publication in daily Thunthi based on Ex. M1.	
W2	204 88	Xerox copy of the administratitive guidelines issued by Respondent/Bank for implementation of Ex. M.L.	

copy of the letter advising not part time Menial—G. Pandi opy of the appointment order to and: copy of the pay stip of T. Seka north of February, 2005 wait his of Madural Circle. copy of the Madural Module
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copy of the Madurai Moduk
letter about Engaging temporary ces from the panel of wait list.
copy of the Head Office circula regarding Norms for sanction o
ger staff. opy of the minutes of the Bipartit
k .
copy of the settlement between dent/Bank and All India Staf
of India Staff Federation for entation of norms—creation of the general attendants.
copy of the local Head Office about Conversion of part time sees and redesignate them a
attendants.
copy of the local Head Office or about Appointment concerned approximation of the contract of
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copy of the order in $\mathbf{W}.\mathbf{R}$
copy of the order in O. i 87/97 of High Court of Orissa.
copy of the order of Suprem s First No. 30 82/99 .
copy of the wait list of Chennie.
copy of the order passed in CM 289, and $16290/99$ in $\mathbf{W}J$
73/99 .

नई दिल्ली, 19 **ज्ला**ई, 2007

व्याअर 2180,—औद्योगिक विवाद अधिनयम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रवस्तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवंध में निर्दिश्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 247/2004) को प्रकाशित करती है, बो केन्द्रीय सरकार को 19-7-2007 को प्रणत हुआ था।

(सं. एल-12012/489/98-आईआर(बी. I) J अजय कुमार, डेस्क अभिकारी

New Delhi, the 19th July, 2007.

S.O. 2180.—In persuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 247/2004) of the Central Government Industrial Tribunas-cum-Labour Court, Chennai as shown in the Annexire in the tribunitial Pispute between the management of State Bank of In tip, and their workmen, received by the Central Governe ent on 19-7-2007.

[No.L-12012/489/98-IR (B. It)]

AJAY KUMAR, Desk Officer

ANNEXI RE.

BEFOR: THE CENTRAL GOVERNMENT INDUSTRUM TRIBUNAL CUM-LABOUR COURT, CHENNAI

> Wee needay, the 31st January, 2007 PRESENT

K. J. YARAMAN, Presiding Officer
Industrial Dispute No. 247/2004
(Priocipa, Labour Court CGID No. 174/99)

(in the statter of the dispute for adjudication under clause (ii) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Denotes Act, 1947 (14 of 1947), hetween the Management of East of India and their workmen]

BETWEEN

Sri P. Manickum

: I Party/Petitioner

AND

The Assistant Co. 101 Manager. : II Party/Management State Bank of In E.

Z.O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram.

For the Management

Authorised Representative : M/s, K. Veeramani,

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/489/98-JR (B-1) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemasi and the said Labour Court has taken the dispute on its file as CGID No. 174/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Count, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 247/2004.

The Schedule mentioned in that order is us follows:

"Whether the demand of the workman Shri P. Manickam, wait list No. 446 for restoring the wait list of temperary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is enjuged?"

3. The allegations of the Perisioner in the Claim Statement are briefly as follows:

The Peritioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of hulia and he was given appointment as moverigoafter an interview and medical examination. He was appointed on temporary basis at Triplicane branch from 22-05-1980. The Patitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Wrig Perinjon filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of sentenest under section 18(1) reached between management of State Bank of India and Ali India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985, 86 were classified in the settlement was under consideration once again and they classified the workings under three catagories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the porice of the Perjifones. about the interview to be held through advertisensemb The Petitioner also submitted his application in the prescribed format through Branch Manager of the Triplicane. branch life was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the copill of anterview and also with regard to appointment. But, the Petitioner was informed craffy to join at the branch where he initially worked as a class IV conployee I from 22-05-1980, the Petitioner has been working as a temporary messenger and some times. performing week in other teamphes also. While working on temporacy basis in Ningambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31.3 97 that his services are not required. any more and he need not attend the office from 1-4-97. Hence, the Patitionar raised a dispute with regard to

his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested, the Respondent/ Bank to continue to engage him in service as obtained mior to [3] -3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Pentioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him effer interview do not merit consideration. The Petitioner was not a party on the verdement mentioned by the Respondent/Bank before. the conciliation officer. Therefore, the Respondent's action $\dot{}$ in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the LD. Act. The termination of the Petitlober is: against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wan list has been prepared and the Respondent/ Bank has been regularising according to their whims and fancles. The Respondent/Bank has also not observed the instructions regarding grant of morements, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts' :: to unfair labour practice. The wait list suffers serious. infirmities and it is not based on surict seniority and without any rationale. Hence, for all these reasons the Petitioner, prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent in its Counter: Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the r question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner'is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of . law, retrenchment and implemented by Respondent/Bank 🕟 The claim of the Petitioner is not bounfide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and . could not be altsorbed as be was positioned down in seniority. Due to the business exigency, the Respondent!. Bank ongaged the temporary employees for performance ... of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are chiming permanent absorption and. when their case was espoused by State Bank of India Staff. Fedgration which resulted in five settlements dated. 17-11-87, 16-07-88, 07-10-88, 9-1-91, and 30-7-96. The said

settlements became subject matter of conciliation. proceedings and minutes were drawn under Section 18(3). of 1.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was west listed as candidate No. 446 in wait list of Zonat Office, Chemnai. So far 357 wait listed temperary candidates, out of 744 whit listed temporary employees. were permanently appointed by Respondent/Bank. It is . false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in Icave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retrenchment provisions referred to above. cannot turn around and claim appointment. Sout of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed: Under the settlement, employees were categorised as A. B. and C. Cimuidering their temporary service and subject to other eligibility criteria, under category (A) the important employees who were engaged frir 240 days were to be considered and under category (B) the temperary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary strivics 👉 in any calendar year after t-7-75 or minimum 70 days. aggregate (eitiformity service to any continuous block of 36. calendar months were to the considered. As per clause 🗓 💠 the length of lengthrary service was to be considered for sendority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date watextended apto 31-3-1997 for filling up variancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not to regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temptrary employees were appointed and since the Petitioner was wait listed at 446 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to concretely such pitcs. It is not correct to say that documents and identity of Potitionar was verified before the Petitioner was expaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per sertlements, vacancies upto-31-12-94 were filled up against the wait list of temporary.

employees and vacancies for 1995-96 has to be titled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages/was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Politioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Peritioner has fulfilled the criteria set our by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class ${
 m IV}$ post. He was engaged in the messenger post in the subarriinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Perificiner as he has acquired the valuable right eashrined by the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with alterior motive. The Respondent/Bank. has been arbitrarily filling on the vacancies with the persons other than wait listed workmen according to their whiths and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the l'editioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under \$ection 18(3) of the Act. As per recruitment rules of the Respondent/Bank, retruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Peutson before the High Court in W.P.No.7872 of 1991, the Petisioner questioned the settlement dated 27-10-88 and 9-1-91. It is talse to allege that the settlements are contrary to the rights of the Petisioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these discumstances, the points for my consideration are:
 - (i) "Whether the domand of the Petitioner in Wail List No. 446 for restoring the wait list of temporary messengers. In the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for anterview and having been selected and wait listed in terms. of the relevant guidelinesAproplars of the Respondent/Bank. in permanent vacancies. In subordinate cade on temporary basis. After engaging them intermittently for some years. the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Perition before the Supreme Court to proteen the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank murriedly. entered into a settlement on the issue of absorbtion of camporary employees and filed it before the Supreme Court. at the time of final bearing of the Writ Petition. This sentement has become an exhibit of the Respondent/Hack and has been marked as Ex. Mt. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it as not binding out them on the ground that may have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice degled an apportunity to work in the bank after. 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retranshment as unjust and illegal and they Surface prayed for rejustatement with back wages and other. attendant benefits.

 On behalf of the Peritioner, it is contentled that these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and (urther, the same guidelines carry the procedure for regularisation of servace of the remporary employees and any settlement in this regard is redundant and in any case. the Pentioner is not bound by settlement under Section. (801) entered into between the alleged Federation and the Respondent/Management They further contended that though the Respondent/Bank has stated that the Petitioner. has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous. service on 17-41-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees. at branches/offices are not allowed to be in service. exceeding 200 days, neads the question of Petitioser working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appuintment as Section 25G and 25H are very much applicable to the Peshioners who are retrendted messengers. and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OT DERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies by for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and en ingeable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to sime in connection with the implementation of the set tements on absorption and which are statutory in character, Further, a combined study of Ex M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his fature with the settlements, Further, Clause 1 of Ex. MJ ueals with categorization of retrenched temporary employees into "A. B and C", but this categorization of "A. B & CT is quite opposed to the doctrine of flast coope. Sint go it or first come— last go i and therefore, the cutegorization in Ciause I is illegal. Clause I(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and altowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etchion absorption along with the other eligible caregories. of temporary employees is not valid. Further, engaging cesnals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are seriotily prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the aligable categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual bases should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have executed only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M ii) were found suitable for appointment as messengers and sweepers. Fivon MW It is unable to say as so when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was propared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Mt. M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27:10-88 was not included in the Madras circle since the High Court noter is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under

 $E_{\rm A}$ M 10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hop'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were gaid scale wages as per Hipertite Settlement while the 1988 settlement deatt with daily wager in Class IV estegury who were paid wages daily on mutual agreement basis. In such consumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M(I) comprises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the chasis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides. for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M.10 namely wait list is not inconformity with the inspections of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding conjected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No. 11932/91 in W.P.Ne.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8 88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M: was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Politioner that though the Respondent/Bank has alleged that these petitioners were engaged in feave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement. un absorption of remporary employees, the expression that they were engaged in Icave vacancy was used as a device

an rake them out of the principal clause 2 (66) of the I.D. Act. 1947. Though the Peritioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as 'soch is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA. AND OTHERS wherein the Supreme Court has held that The employ weakmen as 'badlies' casuals or temporaries. and to contimie them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been. prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. MHF which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not seted in accordance with the law and the spirit of the settlement. but in ufter violation and in breach of it. Though charve 2(e) of Ex. M4(states that candidates found suitable for permanent appointment will be offered appointment against. existing/future riscancy anywhere in module or circle and an case, a candidaté faits to accept the offer of appointment. or possing within the prescribed period, he will be deemed. to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Responded Bank has not produced any document. show how he has arrived at the seniority and till date, it is a mystery as the who that senior was and there is no documentary evidence in support of the airement and also for the averiment of MW 1. Therefore, the termination of the Peririoner who was in regular service of the Respondent/ Bank is arbitrary, matu fide and illegal and the Respondent/ Bank has not kered in accordance with the terms of settlement on abkorption of temporary employees. Though she Respondent#tank has produced Ux. 346 which alleged to be a copy of trinutes of conciliation proceedings dated. 9-6-75 before Regional Labour Commissioner (Central). Hyderabad, it is neither a 18(3) settlement nor 12(3). scattement as oldinged by the Respondent/Bank which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M f.J. interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Peditioner: Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination hid become apparent that they have no personal knowledge about the settlements which are marked as I/x. M1 to M5. Above all, though the Respondent/Bank. has referred to voluntary retirement scheme, in the Respondent/Barix it was implemented only in the year 2001. and it constitutes post reference period and hence evidence.

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240. days and more in a continuous period of 12 calendar months. as enshristed under section 25H and 25H of the Industrial. Disputes Act, therefore, their remembers from service is illegal and against the may dujory principions of Section 25. and therefore, they are decised to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Peritioner that though some of the Peritioners. in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not include? The Sundays and paid ballidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar. months. He also relied on the rulings reported in 1985-41. LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein: the Supreme Court has held that the expression factually worked under the employer, cannot mean that those days only when the working own ked with handness, spekle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been soud wages either under express in implied contract of service or by continuision of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank this conducted the internew and selected the temporary employees who have reported to have submitted their application for absorption as per the bank is circular and therefore, their retrenchment is ittegal. In all these cases, the Petitioners were in employment as substaff in early 1980s her were denied further engagement. on account of settlements/lapsing of wait fists and out of these Petitioners some of them have completed 240 daysand more in a committous period of 12 calendar months. and they are in ago group of 40 to 50 years and for no fault. of theirs, they find themselves straigled in life madstrain. They have also not gainfully employed. It such direumstances, this Tributal bacit; pays an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular approximate/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(2) of the ID. Act, in line of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners attenct bonafule and are made with olterior motive. Further, they have conscaled the material facts that the Petitioners who want listed as per-

length of his engagement and could not be absorbed as he .was positioned down in the seniority. The Respondent Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacqueins. The settlement entered into by the Respondent/Bank and the federation were bounfide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Pentioner is assumed from questioning the sentement directly or indirectly and his claim is liable to be rejected. For the amone, the said sentences were not questioned by any union and the settlements were bank level settlements annioperate throughout the country. Further, he relied on the ratings reported in 1991 ILL 1323 ASSOCIATED GLASS INDUSTRIES LTD, Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workings and the workings resigned from the job and received terminal banefus, but the workmen raised a plea before the Tribunal that they did not resign voluntarily., But the Andhra Pradesh High Court has held ... that "in the absence of plea that the settlement reached in the course of conciliation is valiated by fraud. misrepresentation of coercion, the septement is bigding on the workmen." Learned counsel for the Respondent lutility relied on the rulings reported in 1997 II [11] [189 ASHOK AND OTHERS Vs. MAHARASHTRA SEATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proposedings with a recognised majority union will be building on all workmen of the establishment, even those who belong to the mipority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to apply the sanctity of settlements reached within the active assistance of the conciliation officer and to discourage as individual employed or a minority union from expoling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even epituption or other independents. But, in the absence of Such allogations, a seulement in the goorse of collective hargeining is entitled to due weight and consideration." Learned counsel for the Responders further relied on the cultings reported in 1997 J. LILI 308 K,C.P. LTD, ${
m Vs.}$ PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories camply (i) those arrived at outside the conciliation proceedings under Section 18(1) of the LD. Act and (ii) those arrived at in the course of enocification proceedings under Section 18(3). A settlement of the first category has simited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be hinding on all workman of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workings were morphers and if there was nothing intreasonable or unfair in the terms of the scatternant, it coust be bricking up the contesting workmen also," He further relied on the rulings reported to AIR 2000 SC 469 NATIONAL HINGINGERING . INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND QTHERS wherein the Supreme Court has held that . "scalement is arrived at by the free will of the parties and is a product to these being good will between them. When there is a dispute that the settlement is not being fide in nature or that it has been arrived at on account of fraud. misrepresentation or rongestment of facts or even compyrism and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Gove may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement so reached with the help of the engeligation officer must be , fair and reasonable," Relying on all these decisions, learned coursel for the Respondent contended that though it is \sim alleged that they are set parties to the settlement, since the federation in which the Patitioner is also one among them. they have entered into settlement, with the bank and therefore, it is binding on the Positioner, Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estapped from disputing the same. . . . :

11. Learned counsel for the Respondent further consended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified? The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Churt has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Pethioner it is contended that more wording of reference is not decisive in the matter of tenability of a reference and he relied on the rullings reported in 1998 LAB IC 345 SECRETARY, KOLLAM III LAHOTA AND SHIP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM Wherein the Kerala High Court has held that "more wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the magnial before it, it has only unduty and that is to decide the points on merits and not to find our same technical defects in the wording of reference, subjecting the poor workman to tardship involved in moving the maghinery spain." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Perinioner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He aiso relied on the rolings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to opinsider the order under reference in a rechnical. manner or a pedantic manner, but should consider the order. of reference in a fair and reasonable manner." He also argued that in Express Newspupers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Coun has held that "the Tribunal. has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which, would prolong the industrial adjudication. The Labour Court is expected to decide the real patters of disputes between the parties and with that object in view. ir should opnsider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings. of the Petitioners and can decide whether the Petitioner is: entitled to be reinstated in service as alleged by him and whether he is emitted to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

- 13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Pederation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.
- 14. Then the tearned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wair list has been exhausted, now the Petitioner cannot question that he should be ministed in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VHEESH wherein the Supreme Court has held that "the only question which falls for determination to this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of setect list on addaction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of vacancies and convequently, a contain number of bottom. persons were removed from the select itst and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "its such gircumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7 2:87 the bank informed the Respondents that the panel was valid for one. year only and that inclusion of their names in the panel. was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that ji was a yearly panel expirmg on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the uppeal respectively." He further relied on the rulings. reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held. that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitionet has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait 2st was made with male fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petirioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rutings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy: (b) he was not sponsored by Employment Exchange, nor was beappointed in pursuance of a potification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time.

of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in parts 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Purther, there can be no rule of fromb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction most follow prespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the "decision reported in 1997 ITSEC 1 ASHWAN! KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Pull Bench of the Supreme Court has considered the above regularisation of appointment in excess of sauctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against as available vacancy which is already sanctioned. But, if the initial cutry itself is unauthorised and is not against any sanctioned vacancy. question of regularising the incombent on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in fatility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these . temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies. and therefore, they are not entitled to claim any absorption in the Respondent/Bank, Purther, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR. VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot he construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994-3 L.J.J (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 250 of the LD. Act retrenchment procedure following principle of 'hast come—first go' is not raundatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and remining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank, Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with custs.

15. Learned Serior Artvocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVL the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be calliled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment bas come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Purther, it has also held that " it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and secrepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got coupleyed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer may right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a ducprocess of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL PERTILIZERS LTD, AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that "regularisation furthermore, is not a goode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SUR[INDER KUMAR, the Supreme Court has held that "it is not discance that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recusitment rules. Any recruitment made indiviolation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further. 30 2006 \$ LLN 89 MADHYA PRADESH STATE AGRO-INDUSTRUS DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself, would not confer any legal right epose him to be regularised in service. "The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Goyt, in the wake of prevailing market economy, globalization, privatisation and outsourcing is evident, in view of the sertled (egal position, as noticed hereinbefore."

16, Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Pentioned is not entitled to claim regularisation of his service Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and lenderation and since they have not questioned the wait fist prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by sculements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner;

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misiapresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19 But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Goyt, in the wake of prevailing market economy, global/sation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstationent in the Respondent/Bank as affeged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what telief the Peritioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any rehef as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, consected and promoniced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri P Manickam

WW2 Sri V.S. Ekambaram

For the Respondent MW; Sri C. Mariappan

MW2 Sri C. Ramalingam

Documents Murked :-

Ex. No. Date Description

W1 I-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2 20-04-88 Xerox copy of the administratifive guidelines issued by Respondent/Bank

for implementation of Ex. M1.

W3						
14.3	2 4-4-9 1	Xerox copy of the circular of Respondent/Bank to all Branches	W20	17- 03-97	Xerox copy of the service particulars— I. Velmurugan	
	0.4.05.00	regarding absorption of dully wagers in Messenger vacuacies.	₩21	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi	
W 4	01-05-91	Xerox capy of the advertisement in The Hindu on daily Wages based on Ex. W4.	W22	31-03-97	Xerox copy of the appointment order to Sri G. Pandi	
₩.s	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W23	Peb. 2005	Xeron copy of pay the slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle	
₩6	15-03-97	Xerox copy of the circular letter of Zonal Office. Chemnal About filling up to vacancies of messenger posts.	W34	13-02-95	Xerox copy of the Madurai Module Circular letter about Linguigning temporary employees from the panel of wait list	
W7	25 -03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger vacancies and filling them before	W25	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff	
ws	Nī.	31-3-97.	W26	09-07-92	Xerox copy of the minutes of the Bipartite meeting	
		Xerox copy of the instruction in Roserence book on suff about casuals not to be engaged at office/branches to do massengerial work.	W27	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of	
W9	21-06-83	Xerox copy of the service certificate issued by Triplicate Branch.			part time general attendants	
W10	23-01-92	Xerox cupy of the service certificate issued by Nungambakham branch.	W28	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as	
Will	184)2-92	Xerox copy of the service certificate issued by Chimtadripet branch.	W29	31-12-85	general attendants Xerox copy of the local Head Office	
W 12	10-01-98	Xerox copy of the service certificate issued by Town Branch.	2	31-12-65	circular about Appointment of temporary employees in subordinate cadre	
W33	25-01-06	Xerox copy of the letter from Petitioner for service Service being Issued to	For the Respondent/Miningoneut:			
		for service Service being issued to				
		Deputy General Manager, State Bank of	Ex. No		Description	
Wite	364	Deputy General Manager, State Bank of India, chemai,		o. Date		
₩I\$	NE	Deputy General Manager, State Bank of India, chemai, Xerea copy of the admowledgement card	Ex. No	o. Date	Description	
W14 W15	Në Në	Deputy General Manager, State Bank of India, chemai, Xerea copy of the solmowledgement card and Postal receipt.	Ex. No M1	o. Date 17-11-87 16-07-88	Description Xerox copy of the settlement.	
	-	Deputy General Manager, State Bank of India, chemai, Xerea copy of the administrative guidelines in reference book on staff	Ex. No M1 M2	o. Date 17-11-87 16-07-88	Description Xexox copy of the settlement. Xexox copy of the settlement.	
	-	Deputy General Manager, State Bank of India, chemai, Xerea copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank	Ex. No M1 M2 M3	17-11-87 16-07-88 27-10-88	Description Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the settlement.	
W15	Nii	Deputy General Manager, State Bank of India, chemai, Xerox copy of the administrative and Postal receipt. Xerox copy of the administrative guidelines in reference book on staff matters issued by Rospondent/Bank regarding recruitment to subordinate care & service conditions.	Ex. No M1 M2 M3 M4	0. Date 17-11-87 16-07-88 27-10-88 09-01-91	Description Xerox copy of the settlement.	
	-	Deputy General Manager, State Bank of India, chemai, Xerea (185) of the admowledgement card and Postal receipt. Xerox copy of the administrative guidelines in reference book on staff matters issued by Rospondent/Bank regarding recruitment to subordinate	Ex. No M1 M2 M3 M4 M5	0. Date 17-11-87 16-07-88 27-10-88 09-01-91 30-07-96	Description Xerox copy of the settlement.	
W15	Nii	Deputy General Manager, State Bank of India, chemai, Xerex ergy of the solmowledgement card and Poetal receipt. Xerox copy of the administrative guidelines in reference book on staff matters issued by Raspondent/Bank regurding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff mattern Vol. III consolidated upto 31-13-95. Xerox copy of the call letter from Machinai zonal office for interview of messenger.	Ex. No M1 M2 M3 M4 M5 M6	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91	Description Xerox copy of the settlement. Xerox copy of the minutes of appealintion proceedings. Xerox copy of the order in W.P.	
W15 W16 W17	Nij Nij 06-03-97	Deputy General Manager, State Bank of India, chemai, Xerox crys of the solmowledgement card and Postal receipt. Xerox copy of the administrative guidelines in reference book on staff matters issued by Rospondent/Bank regarding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff mattern Vol. III consolidated upto 31-12-95. Xerox copy of the call letter from Machinai zonal office for interview of messenger post—V. Muralikannan	Ex. No M1 M2 M3 M4 M5 M6	0. Date 17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91 15-05-98	Description Xerox copy of the settlement. Xerox copy of the minutes of appealiation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. Xerox copy of the order of Supreme Court	
W15	Nji Nji	Deputy General Manager, State Bank of India, chemai, Xerox crys of the solmowledgement card and Postal receipt. Xerox copy of the administrative guidelines in reference book on staff matters issued by Rospondent/Bank regarding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff mattern Vol. III consolidated upto 31-12-95. Xerox copy of the call letter from Machinai zonal office for interview of messenger post—V. Muralikannan	Ex. No M1 M2 M3 M4 M5 M6 M7	0. Date 17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91 15-05-98 10-07-99	Description Xerox copy of the settlement. Xerox copy of the minutes of appealiation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.	

नई दिल्ली, 19 जुलाई, 2007

कर आ. 2181.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/अमन्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 237/2004) को प्रकाशित क्राती है, जो केन्द्रीय सरकार क्ये 19-7-2007 को प्राप्त हुआ था।

[सं. एल- : 2012/440/98- आई. अस. (थी-I)] सन्दर्भार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2181.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 237/2004) of the Central Government Industrial Tribunal cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Governmenton 19-7-2007.

[No.1.-12012/440/98-IR (B-I)]
AJAY KUMAR, Desk Officer
ANNEXTRE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TREBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT

K.; JAYARAMAN, Predding Officer Industrial Dispute No. 237/2004 (Principal Labour Court CGID No. 164/99)

(In the maner of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

BETWEEN

Sri K. Raju

: I Party/Petitioner

AND

The Assistant General Manager, : If Party/Management State Bank of India,

Z.O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram,

Authorised Representative.

For the Mariagement.

: M/s. K. Vecramani, Advocates.

AWARD

 The Central Government, Ministry of Labour vide Order No. L. 12012/440/98-IR (B-I) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chernai and the said Labour Court has taken the dispute on its file as CGID No. 164/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 237/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Raju, wait list No. 659 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petatsoner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Perambur branch. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Wris Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, to addition to its. counter, filed a copy of settlement under section 18(1). reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary. workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once. again and they classified the workings under three categories namely A, B and C. Though the classification. was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held. through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Perumbur branch, He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Thousandlighs branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Peritioner orally on 31-3-97 that his services are not required. any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure. the matter was referred to this Tribunal for adjudication.

Though reference was sent to this Iribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govil to reconsider the reference and the Patitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not ment consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action. in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G &. 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single want list has been prepared and the Respondent/ Bank has been regularising according to their whims and families. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts. to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal intelf is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in semiority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said: settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3).

of I.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 659 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner Worked as a temporary messenger. The Petitioner was engaged only in leave varancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Utider the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary corplayees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service: in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 (or filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retrement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid scittlements, out of 744 wait listed candidates, 357 temporary. employees were appointed and since the Petitioner was wait listed at 659 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped. from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said seulements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamit Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entenain such plea. It is not correct to say that documents and identity of Petitioner was verified. before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto-31-12-94 were filled up against the weited list of temporary. employees and vacancies for 1995-96 has to be filled upagainst the wait list drawn for appointment of daily wages/

casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent obserption. Hence, for all these reasons, the Retpondent prays to dismiss the claim with costs.

- 5 In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria second by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberard and artificial breaks. Therefore, the Respondent/Bark is duty bound to regularise the services of the Petitioner as he has acquired the valuable right coshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect than under no circumstances, wait listed persons like the Peritioner be engaged even in menial category, thus, the Respondent/Bank imposed total han for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank. has been arbitrarily filling up the vacancies with the persons. other than wait fisted workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Conner Statement of the Respondent, wherein it is stated that all the sentenents made by the bank with the State Bank of India Staff fledetation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment oiles of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in IV.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. [Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wais List No. 659 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as remporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. I:-

B. In this base, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners

in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed interms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them interminently for some years. the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary. employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court. to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Weir Petition. No. 542 (civil) 1987, the Respondent/Bank humledly entered into a serilement on the issue of absorption of комухтиту employees and filed it before the Supreme Court at the time of final hearing of the Writ Petirion. This settlement has become an exhibit of the Respondent/Bank. and has been marked as Ex. M.I. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vocumey and Respondent/Bank without any intimation of notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the Ishour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other. attendant benefits.

On behalf of the Paritieser, it is contended that these Petitioners were recruited as temporary employees. in the Respondent/Bank under the goodelines and circulars issued by the Respondent/Bank from time to time and forther, the same guidelines earry the procedure for regularisation of service of the temporary employees and any settlement in this regard is sedandard and in any case. the Petitioner is not bound by sentement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for neare than 240 days in a continuous. period of 12 calendar mostles and was not in continuous service on 17-11 1987, therefore, they have no valid and enforceable right for appointment, in the water of smitinstructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is proposterous to comend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. I carned representative for the Pelitioner contended that in 1996 J.AB & IC 2248 CONTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has beid that Chapter V-A of the

I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retreached workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2. W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retreoched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come— last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual busis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, cogaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per hank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more hereficial treatment in the matter of arriving at qualifying service for interview and selection, But. temperary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates. under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the sertlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW (has spoken about the settlements, he deposed that scrilement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in

its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per-Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages. daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they formed (wo distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on hehalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absurption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Pentioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacabaies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after' the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait fist under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list, Above all, Fx. M1 was not produced at the time of conciliation proceedings bold during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list $E_{\rm X}$. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though

the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 HLD; SDK7H Vs; RESFR V G BANK OF INDIA AND OTHERS wherein the Supreme Court has field that "to employ workmen as "hadlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges;of permanent workmen is illegal." Learned representative further contended that Lix M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the scheeted candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also had in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of E_R , M4. states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacquety anywhere in module or circle and in case, π candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused in and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is: a mystery as to who that senior was and there is no documentary evidence in support of the avernion and also for the averment of MW t. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fule and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlemention alexorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated. 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3)sculements as claimed by the Respondent/Bank which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced. Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ccased to have any relevance when the main with has been disposed. of in the year 1999 and therefore, they do not have any bearing muthe case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M140 M5. Above all, though the Respondent/Rank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and bence evidence. of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months

as enshrined under Section 25B and 25F of the Industrial. Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits. under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LD3 have not completed 240 days, since the Respondent/Rank has not taken into consideration and not included the Sundays and paid holidays as days on which the Perisioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rollings reported in 1985 ${
m II}$ LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. Management of american express INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually. worked under the employer' cannot mean that those days. only when the work oven worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call leners produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their

But, as against this, the learned senior counsel. for the Respondent/Bank contended that the reference made by the Government itself is not maintaintable in view. of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes. were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Peritioners are not bonafide and are made with ulterior motive. Further, they have concealed. the material facts that the Petitioner was wait listed as perlength of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary corployees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonufide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by 88 y union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 LU 323 ASSOCIATED GLASS INDUSTRUS LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised » plea before the Tribunal that they did not resign velumarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is viriated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent Litther relied on the rulings reported in 1997 Π LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the concritation proceedings with a recognised majority union III be binding on all workmen of the establishment, even Those who belong to the minority union which had objected. In the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of scallements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further hold that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even Corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." I repried counsel for the Respondent further relied on the ratings reported in 1997 I LLI 308 K.C.P. LTD. Vs. FRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that it settlements are divided into two categories namely (i) those arrived at outside the conciliation. proceedings under Section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings. under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and scalement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair.

in the terms of the sculement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD, Vs. STATE OF RAJASTHAN ANU-OTHERS wherein the Supreme Court has beld that "settlement is arrived at by the free will of the parties and is a pointer to the being good will between them. When there is a dispute that the settlement is not bunafide in nature or that it has been arrived at on account of fraud. misrepresentation or concealment of facts or even corruption and other includements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations. as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have concred into settlement with the bank and therefore, it is binding on the Peritioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estupped from disputing the

1]. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrendment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

But as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive. in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY. KOLLAM JILLA HOTEL AND SHOP WORKERS UNION $oldsymbol{
m V_{S}}$, INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has beld that "mere warding of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, is has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference; subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact patters of pleading of the Peritioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he

argued that the Tribanal has got power to go into the question whether the Peritioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LABIC M64 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Triburai cannot gir behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been reseatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner up a pedantito manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in ATR 1993 SQ 569 the Supreme Court has held that "the Trabunal" has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed not was it trained to the high expectation of the Labour Court." Relying on all these decisions, the regresentative for the Petitioner argued that though in the references: It is not mentioned that whether the retreachment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings. of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But I find that the settlement was validly entered into between the Respondent/Bank and Pederation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the relings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VHEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, principal of

select list on reduction in number of vacancies was made in view of the impensing absorption of steam sufplus staff and a policy decision has been taken to reduce the number of valuancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative ments in which, the Supreme Court has held that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNTOK ATE BANK & ORS Vs. SHANKAR PALT, AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Pedition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INTMA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no male fide on the port of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such direumstances, after the expiry of the dare namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGH AND OTHERS wherein the Supremo Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction hits been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoof temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange, not was be appointed in pursuance of a notification calling for applications which means be had entered by a buck door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by as in para 32 which would arise from

giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb-in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other. relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision. reported in 1997 If SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void. is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner er en ad-hoc basis agniost an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularizing the incumbent. on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against. any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the ratings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 250 of

the I.D. Accretenehment procedure following principle of 'last come - first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in hanking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVL the Supreme Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent murely 6.4. the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of adhoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that " it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain— not at arms length since he might have been. searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpensate illegabilies and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "imiless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuous c. if the original appointment was not made by following a due. process of selection as envisaged by relevant rules. "Lighter, or CDJ 2006 SC 443 NATIONAL PER PLEASE LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Finther, in CDI 2006. SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER; KUMAR, the Supreme Court has held that "it is is not disputed that the appointment of the Respondent was not in panetioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its emplayees was bound to follow the recognitionnt rules. Any recruitmentmade in violation of such rules us also in violation of constitutional scheme enclarined under Articles 14 and 16. of the Constitution of India would be void in law." Further, ia 2006 2 LLN 89 MADHYA PRADESH STATE AGRO-INDUSTRIBS DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has hold that fonly. because an employee had worked for more than 740 days. of service by that itself, would not confer any legal right. upon him to be regularised in service. "The Supreme Court also held that "Tthe changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, proveduation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counselor the Respondent contended that since the Petitioner. has not been appointed for regular post nor has he been. appointed in regular vacancy or sanctioned post, the Partitioner is not entitled to claim regularisation of his service. Forther, which they have not been questioned the fivesettlements entered into between the Respondent/Bank. and Ferleration and since they have not questioned the wair list prepared by the Respondent/Bank, show are not entailed to dispute the same and they are estopped from during so. Forther, their prayer before the labour authorities. was only to restore the wait list and also for appointment. thereon as temporary messenger as per wait list. Undersuch circumstances, after expiry of the period mentioned. in the settlements which were subsequently amended by settlements. the Petitioners cannot now question either. rise preparation of wait list or number allowed to them. Under such direnthstanees, it cannot be questioned by the

§ 7. I tied much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations: with regard to preparation of wait list and also settlements. entered into between the Respondent/Bank and Federation. at the time of reference, they have not questioned the sentement nor the number allotted to each individual in the wait list. Further, the Petitioners have not opestioned the settlement and they have not alleged that settlement was not it bene figle in nature or it has been arrived at on account. of mala fide imisrepresentation, fraud or even corruption or ether inducements. Under such circumstances, I find the Patitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the

Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Peritinners cannot claim for reinstatement or regularisation in services of the Kespondent /Bank.

 Parther, the representative for the Petitioner. contended that in a similar cases, this I rebund had ordered for reinstalement with back wages and these disputes are siso similar in nature and hence, the Pecitioners are entitled

But, I find since the Supreme Court has held that. temporary employees are not injured to claim any rights for regularisation, merely because they have completed 240. stays of continuous service in a period of 12 calendar months. and the Supreme Court has also held that each case must he considered on its own morit and the changes brought. about by the subsequent decisions of the Supreme Court. perbably having regard to the changes in the policy. degreenes of the Gost in the wake of prevailing market. economy, globalisarion, privarisation and outsourcing is emagent. I find the Permioner is not entitled to chaim. regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitiener:

Point No. 2

The next prime to be decided in title case is to what resignitive Perinoner's connected.

- In view of any foregoing furnings that the Peratroner is a temperary employed and he is not emitted to: he absorbed in regular service or made permanent merely. on the strength of such continuance of work. I find the Permioner is not enritled to any relief as claimed by him. No.
 - Druk, the reference is answered accordingly.

(Dietaied to the P.A.) transcribed and typed by him, corrected and pronounced by the linthe open court of this. day the 31st January, 2003. •

K. JAYARAMAN, Presiding Office:

Witnesses Examined:

For the Petitioner.

WWI SarK, Rajur

WW28r V, S. Ekambarani.

Put the Respondent

MWT Spr.C. Mantappan.

MW2 Sri C. Ramalingami

Documents Marked:—

Ex. No. Dute:

Description:

WI. 1408-88

Xerox copy of the paper publication in daily Thanthi based on Ex. Mil.

W220 (# 88 i Xerox copy of the administrative guidelines issued by Respondent/Bank. for implementation of Ex. M1.

WB. 21 491 Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

	<u> </u>				
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wagers based on Ex. W4.	W23	26-03-97	Xerox copy of letter advising selection of part time Menial—G. Pandi
WS	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying	W 24	31-03-97	Xerox copy of the appointment order to Sri G. Pandi
W 6	15-03-97	service to daily wagers Xerox copy of the circular letter of Zonat Office, Chennai About filling up to vacancies of messenger posts.	W25	1945, 2005	Kerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger	W26	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list
		vacancies and filling them before 31-3-97.	W27	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W8	MI	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do massengerial work.	W28	09-07-92	Xerox copy of the minutes of the Bipartite meeting
W9	30-11-84	Xerox copy of the service certificate issued by Perambur Branch.	W29	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for
₩JD	NII T	Xerox copy of the service certificate issued by Elephant Gate Branch.			implementation of norms—creation of part time general attendents
WT	02-12-95	Xerox copy of the service certificate issued by Thousand Lights Branch.	W30	07-02-06	circular about Conversion of part time
W 10	09-01-96	Xerox copy of the service certificate issued by Washermenpet Branch.			employees and redesignate them as general attendants
WIR	13-03-96	Xerox copy of the service certificate issued by Elephant Gate Branch.	W31	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate
W14	13-03-96	Xerox copy of the service certificate issued by Elephant Gate Branch.			cadre
Wis	28-05-97	Xerox copy of the service certificate issued by Thousandlights Branch.	For the Respondent/Management :— Ex. No. Date Description		
W16	21-06-97	Xerox copy of the service certificate	MJ	17-11-87	<u>-</u>
49.41		issued by Mint Terminus Branch.	M2		Xerox copy of the settlement.
WIT	Nil	Xerox copy of the administrative guidelines in Reference book on staff	мз		Xerox copy of the settlement.
		reatters issued by Respondent/Bank	M4	09-01-91	
		regarding recruitment to subordinate care & service conditions.	MS	30-07-96	Xerox copy of the seitlement.
W18	Nīi	Xerox copy of the Reference book on Staff matters Vol. III consulidated upto 31-12-95	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W:9	06-03-97	Xerox copy of the call letter from Madural zonal office for interview of messenger	M7	28-05-91	Xerox copy of the order in W.P. No.787291
33/50	04 52 57	post—V. Muralikannan	M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
W20	06-03-97	Xerox copy of the call letter from Madusai zonal office for interview of messenger postK. Subbarraj	МУ	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
W21	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post I. Velmurugan	M10	NE	Xerox copy of the wait list of Chennai Module.
W22	17-03-97	Xerox copy of the service particulars J. Vehranugan	Mil	25-10-9 9	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99.

भई दिल्ली, 19 जुलाई, 2007।

का.आ. 2182.—औद्योगिक विवाद अधिनिवय, 1947 (1947) का (4) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेत्रई के पंचाट (संदर्भ संख्या: 239/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [सं. एत 12012/468/98-आईआर (बी-1) | अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2182.—in pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 239/ 7004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007,

[No.1712012/468/98 SR (B 1)].

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT. CHENNAL

Wednesday, the 31st January, 2007 PRESENT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 239/2004

(Principal Labour Court CGTD No. 166/99)

(in the matter of the dispute for adjudication under clause(d). of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P. Thomas

: I Party/Petitioner

AND

The Assistant General Manager, State Bank of India,

. II Party/ .

Management

APPEARANCE

For the Petitioner

C. Chennai.

: Sri V. S. Ekambaram,

Authorised Representative

For the Management

: M/s. Vecramani, Advocates

AWARD

 The Central Government Ministry of Labour, vide. Order No. L-12012/468/98-1R (B-1) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chennai and the said Labour Court has taken the dispute on its file as COID No. 166/99 and issued notices

to both parties. Both sides enurred appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No.

The Schedule mentioned in that order is as follows:

> "Whether the demand of the workman Shri P.Thomas, wait list No. 407 for restoring the wait. list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workings is entitled?"

The allegations of the Peritioner in the Claim. Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Mannady branch from 16-6-1980. The Peritioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Perition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement. under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three caregories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner. about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Responden/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 16-6-80, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working ontemporary basis in Chindadripet branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for

adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service. in due course. The Respondent/Bank (ook up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the seulement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular. service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temperary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either. by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour. practice. The wait list suffers serious informities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as be was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff. Federation which resulted in five settlements dated 17-11-1987, 16-7-1988, 7-10-1988, 9-1-1991 and 30-7-96, The said settlements became subject matter of conciliation

proceedings and minutes were drawn under Section 18(3). of 1.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 407 in waitlist of Zonal Office, Chennai, So far 357 wait listed temporary. candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Hank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to solection process in terms of settlements drawn as perretrenchment provisions referred to above, cannot turn. around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate. temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees: Who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid. and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peguliar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 407 he was not appointed. The Said settlements were bonafide which were the only workable solution and is hinding on the Petitioner. The Pelitioner is estopped from questioning the settlements. directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu-Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such **ples.** It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged, It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As persettlements, vacancies upto 31-12-94 were filled up against. the waited list of remporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for

appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and bence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to diamiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Peritioner has fulfilled the criteria serout by the Reapondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right. enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner he engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workfren with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Peritioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the semilements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Perition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned: the semilement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are commany to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are :
 - (i) "Whether the demand of the Petitioner in Wait List No. 407 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

 In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Peritioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary. employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (civil) 1987, the Respondent/Bank hurriedly entered. into a settlement on the issue of absorption, of temperary. employees and filed it before the Supreme Court at the time. of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement. as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy. and Respondent/Bank without any intimation or nature. denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other. amendant benefits:

On behalf of the Peritioner, it is contended that those Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of scryice of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by sentlement under Section. 19(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner. has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous. service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temperary employees. at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner. working for 240 days does not arise at all. Further, they bave invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Periationer has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers. and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supremy Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only. for the benefit of the workmen to whom Segtion 25F applies

but for all cases of reprenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retreached workmen. Therefore, the cultertion of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular/instructions of the Residedent/Bank issued from time to time in connection with the implementation of the scallements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Pericioner from the beginning linking his future with the senlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A. B & C' is quite opposed to the doctrine of 'last come—first go" or first come — last go" and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex.M1 provides aff opportunity to persons who were engaged on casual basis. and allowed to work in leave/casual vacancies of messengers, farashes, each coolies, water boys, sweepers erc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible cutegories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, remporary employees have not been informed about this amendment which includes cosuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10. in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17:11 87, 27:10:88 and 9-1-9.1 which are marked as Ex.Mi, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the socalled non-inclusion except his bald statement. Further, according to MW1 weit list under Ex.M10 was prepared on 2.5.92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that "it is clear that the 1987 settlement was concerned with the remporary class IV employees who were paid scate wages

as per Bipartite Settlement while the 1988 settlement deals with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality continued or perpetrated by the Respondent/Bank by combing equals with unequals. is further contended on behalf of the Petitioner that as per deposition of MW1 wait first under Ex.M10 comparises of both messengerial and non-messengerial candidates. While the temporary étaployees were appointed after due process of selection and were paid wages on the basis of industry-wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the feditioner contended that openaration of Ex.M10 namely wait list is not inconformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per Instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was teleased/ published even after the Court order in WMP No. 11932/91 in W.P.No. 7872/91 directing. the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.MIO does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M. 10 has been prepared in violation of instructions and ceased to have the credibility uttached to the wait list. Above all, Ex. M 1 was not produced at the time of concitiation proceedings held during the year 1997-98 held at Chemni and Madural and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Purther, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (00) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petisioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH

Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'madlies' research or temporaries and to continue them as care for many years with the object of depriving them of the status and privileges of permanent, workmen is illagai "I tairned representative further contended than Ex.M. (0 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected condidates with imagest service should have princity given those who joined the service later and therefore, the wair list under Ex. M 10 which has been drawn up as contrary to law and also bad in law. Thus, the Respondent/Bank has not acted intoccordance with the law and the spirit of the sentement, \$00 in otter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found sugable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the otter of appointment or posting within the prescribed period, he will be decided to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that semon was und there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Hank is arbitrary, malafinds and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Exi. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9.6-75 before Regional. Unicent Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor (2(3) settlement as claimed by the Respondent/Bank which save only with regard to modification of Ex. MI to M4 made in terms of Ex. MA Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P.No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of managerdent witnesses during the cross examination. had become apparent that they have no personal knowledge, about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to Notinitary retirement scheme. In the Respondent/Bank in was implemented only in the year 2001 and it constitutes. post reference period and hence evidence of Respondent/ Bank has no application to the Peritioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as ensurined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illingal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. I the Respondent/Bank and they are entitled to the

beautits under the provisions of LD. Act, It is further co: f. aded on behalf of the Petitianer that though some of the Pentioners in the connected LDs have not completed. 246 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days or which the Petitioners have actually worked and hence, they have a so completed 240 days in a period of 12 calendar months. He also relied on the rulings. reported in 1985 II II (U.539 WORKMEN OF AMERICAN) PAYRESS INSERNATIONAL BANKING CORPORATION Vs. Management of american express INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that The expression tacqually worked under the employer' connot mean that those days. only when the weakmen worked with hammer, sickle or peabut must necessarily comprehend all those days during which they were in the coupleyment of the employer and for which he had been paid wayes eather under express or implied contract of service or by compulsion of staying, standing orders etc." It is further, argued that call letters produced by the Periodnet will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were desired further engagement. on account of settlements/lapsing of wair tists and out of these Petitioners some of them have completed 246 days. and more in a contaminate period of 12 calendar morths. and they are in age group of $40~\mathrm{m}$ SG years and for no fault. of theirs, they find themselves strunded in life midstream. They have also not gainfully employed. In such orcumstances, this Trinopal has to pass an award in their favour.

iii But, as against this, the learned senior counsel. for the Respondent/Bank contanded that the reference made by the Government itself is not maintainable in view of the facts and concumstances of the case. The Pesityoner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption dries not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had scompled the settlements diawn under the provisions of Section (8(!) and 18(?) of the ID. Act, in lieu of the provisions of law and in:plemented by the Respondent/ Bank and the claim of the Peritioners are not bonafide and are made with alresion motive. Further, they have concessed the material facts that the Petitioner was wait fisted as per longth of his engagement and usuad not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary appropers due to business. exigency for the performance of duties as messenger. Further, the allegation that he was spousored by Polyployment Exchange is incorrect and the allegating than he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement correct into by the Respondent/Bank and the federation were honafide which were the only workable solution and

is building on the Petitioner. The Petitioner accepted the septlement and accoundingly he was wait listed and therefore. the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Purphermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 | LL J 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhm Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further reflection the rulings reported to 1997 ILLLI 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be brinding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent of departs from the ordinary law of contracts, the object o**bviously is to upboid the** sanctity of sculements reached with the active assistance of the conditiation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "There may be exceptional cases, where there may be allegations of male fides. Irawi or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLI 308 K.C.P. LTD. Vs. PRESHANG OFFICER AND OTHERS wherein the Supreme Court has hold that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii)those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and xautement of the second casegory made with a recognised majority union has extended application as it will be hinding on all workmen of the establishment, Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the consenting workmen also." He further relied on the radings reported in AIR 2000 SC 469. NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "senlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the

settlement is not bona fide in nature or that it has boso arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet abother industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement resemed with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, leaded counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them. they have entered into settlement with the hank and therefore, it is binding on the Peritioner. Further, ite argued that no union of the bank has questioned the settlement and in such circum:stances, it cannot be said that it is not binding on them and he is estopped from disputing the SOUTHER.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list No, given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified? The Peritimer contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rollings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBLINAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on ments and not to find out some technical defects in the wording of reference, subjecting the poor workman to bardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the tulings. reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS VA. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has beid that "the Tribunal cannot go behind the terms of reference. but that does not mean that it cannot look into the

pleadings of parties." He also relied on the rulines reported ia 1998 LAB IC 1507 A. SAMBANTHAN V., PRESIDING OFFICER, LABOUR COURT, MADRAS, whereing has teen held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of inference in a fair and reasonable manner." He also argued that in Express. Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction." to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, i^{μ} , i^{μ} and Aconsider the order of reference in a fair and re-consider manner, though the order of reference is not happily gramed. nor was it framed to the high expectation of the Labour. Chart "Relying on all these decisions, the representative for the Pelitioner argued that though in the reference, it is not mentioned that whether the retreminment is valid or not, from the pleadings it is clear that the Petitioners have. seen retrepelied from the Respondent/Bank and therefore, this Tribupal can look, into the pleadings of the Pethionery and can decide whether the Petitioner is emitted to be remstated in service as alleged by him and whether he is: confided to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is bryand the scope of reference as without any substance.

- 13 I find some force in the contention of the concessors we for the Petitioner. Therefore, I find this Tributant is entitled to go into the question whether the strict proyed for by the Petitioner can be given to him or not ? But I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank. I like the Teritioner is not entitled to question the settlement.
- 14. Then the learned counsel for the Respondent ാന് endedjukas since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been : assisted; now the Petitioner cannot question that he should be demastated in service and he relied on the rulings. exported # 1996 5 SOC 139 UNION OF INDIA AND O'0'89385 [3] K. V. VUEFSH wherein the Supreme Court has hold that I the only question which falls for determination. in this appeal is whother a candidate whose name appears iii the select list on the busis of competitive examination. acquives a right of appointment in Government service. in an exist**ing** or a future vacancy." In that case, pruning of select he on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number nd vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative metrics. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the

persons removed from the select list is not arbitrary and discriminators " He justher relied on the rulings reparted in 1997 o SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter doted 7-2-87 the bank. informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6.7-98. we are of the opinion that the Respondents did not get any right becouse of inclusion of their names in the road panel for permanent absorption in the services of the bank. Whatever conditional right may had come to an end with the expiry of the panel. The clubs of the Respondents as: contained in the W.P. was thus, miscinceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Paution and the appeal respectively. $^{\circ}$ \mathbf{H}^{*} is other relief on the rulings reported in 1991 3 SCC 42. SHANKARSAN DASH Vs. UNION OF INDIA wherein the **Supreme** Coart has held that "candidates medialed in operio list has na indefeasible right to appointment even if a Ye make extract "and telying on all these decisions, learned counsel for the Respondent contended that since me Peritioner has no right to question the wait list and straig there is no mala fide on the part of the Respondent/Bank in preparing the wait hat, it cannot be each that preparation of wait list was made with *mala filte* motive. Under such circumstances, After the expiry of the date namely 31-3-1997, the Puliabout Language and Switestonation of the wuit list and be cannot play for reinstatement as alleged by him. Further, be relied on the full age reported in 19921 AR. IC 2168 STATE OF HARYANA AND ORS, ν_{s} -plana SINGH AND OTEFAS wherein the Supreme Countries heid that I now coming to the direction that all those agher semporary employees what have continued for more than a year should be regularised, we find it difficult to sustain is. The direction has been given withous reference. to the existence of a vacancy. The disection in effect owing that every od-hos/temporacj employee who has been continued for one year visually be regularised even though (a) no vacancy is available for him-which means creation. of a vacancy: (b) he was not sponsored by Employment Exchange not wan he appointed in pursuance of a redification calling for applications which means he had entered by a hack drow 'c) he was not eligible and qualified for the post at the tune of his appointment; (d) his record of service since his appointment is not satisfultary. They eare the additional problems indicated by μ_{0} in para /2which would arise from giving of such blanket unders None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the more continuation of an ad-hac employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb in such matters. Conditions and circumstances of one writ may not be the same as of the

other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications. it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be smally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose every itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the condidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbers on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation i: given, it would be an exercise in faillisy. It would amount to decorating a still horn baby. Under these circumstances. there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nulltry. Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vocancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYAKTHI & ORS, Vs. STATE OF BIHAR AND CRS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under thuse circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the L.D. Act retrenchment procedure following principle of 'last come · first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his junious were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstancement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKAVA UMA DEVL the Supreme Court has held that marely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hac employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to hargain —not at arms length since he might have been searching for some employment so as to make out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettisan the constitutional scheme of appointment, perpetuase illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appoinment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "waless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDI 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CD3 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Septeme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in valuation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2016 211. N 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANIDLY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not amfer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Gort, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinhelpre."

Rélying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed th regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five semigraems emerged into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so, l'untier, their prayer before the tabour authorities was only to jestore the wait list and also for appointment thereon as temporary messenger as per wan list. Under such discumitances, after expiry of the period mentioned. in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the propagation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner. i

17. I fird much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Pentioneis have made so many allegations with regard to preparation of wait list and also settlements entered into between the ≵espondent/Rank and Federation, at the time. of reference, they have not questioned the settlement for the number allotted to each individual in the wait list Further, the Petitioners have not questioned the settlement and they have not alleged that semigrant was not a bonufide in nature or it has been arrived at on account of main *fide*, misrepresentation, fraud or even corruption or other inducements. Under such discumstances, I find the Petitioners cannot now question the settlements at this stage and sinke they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Hank has got sauctioned posts for temporary employees in he absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Hank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in hattire and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary enables are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on to own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Goyt, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of any toragoing findings that the Peritioner is a temporary employed and he is not emitted to be absorbed in regular service of made permanent merely on the strength of such continuance of work, I find the Petitioner is not consided to any relief as claimed by him. No Costs

Thus, the interence is answered accordingly.

(Dictated to the P.A.) transcribed and typed by lam, corrected assignmentally the in the open count on this day the 31st famount, 2007°

K. JAYARAMAN, Presiding Officer

Witnesses Francined: -

from the Peritioner WWY Sri P. Thomas

WW2 Sri V S Ekambaram

For the Responden: MW Sn C. Mariappan

MW2 So C Ramalingam

Documents Marked : ---

Ex. No	Date	Description
<i>I</i> V.;	05 08 88	Xerox copy of the paper publication in that y Thantii based on Ex. M [
W2	202-04-88	Xerox copy of the administrative guidelines issued by Rospondent/Hank for implementation of f(x, M1.
	24 04-93	Xerns copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01 (6-9]	Xem's copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	26-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15 (3-97	Xerox copy of the circular letter of Zonal Office. Chemnal about filling up of vacancies of messenger posts.
W ?	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches

		regarding identification of messenger vacancies and filling them before	₩27	17-03-97	Xerox copy of the service particulars-J. Velmurugan.
W8	Nil	31-3-97. Xerox copy of the instruction in	W 28	26-03-47	Xerox copy of the letter advising selection of partition Menial — G. Pandi.
		reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W29	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
₩9	31-10-80	•	W30	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
₩10	25-04-83	Xerox copy of the service certificate given by Park Town Branch of Respondent/Bank.	W31	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
Will	21-11-83	issued by Mannadi branch.	W32	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of
W)2	13-07-89	Xerox copy of the service certificate issued by Chimtadripert branch.	W33	09-07-92	messenger staff. Xerox copy of the minutes of the Bipartite
W13	25-07-95		47.33	03-01-72	meeting.
W24	30-12-95	issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch.	W34	09-07-92	Xerox copy of the settlement between RespondenvBank and All India Staff Bank of India Staff Federation for
W(5	25-01.96	Xerox copy of the service certificate issued by Mint Terminius branch.			implementation of norms-creation of part time general attendants.
WI6	25-11-96	Xerox copy of the service certificate issued by Mint Terminius branch.	W35	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as
W1[7	25-01-96	Xerox copy of the service certificate issued by Mint Terminius branch.		21.42.05	general attendants.
WIS	25-01-96	Xerox copy of the service certificate issued by Mint Terminius branch.	W36	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W [9	25-01-96	Xerox copy of the service certificate	For the Respondent/Management :		
		issued by Mint Terminius branch.	For th	r Respoods	art/Manageaneut :
W23	08-01-97		For th Ex. No	_	art/Management : Description
	08-01-97	issued by Mint Terminius branch.		_	Description
W20 W21	08-01-97 11-11-97	issued by Mint Terminius branch. Xerox copy of the service certificate assued by Thousand Lights branch. Xerox copy of the service certificate	Ex. No), Date 17-11-87	Description
W21	11 11-97	issued by Mint Terminius branch. Xerox copy of the service certificate assued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch.	Ex. No Mi). Date 17-11-87 16-07-88	Description Xerox copy of the settlement.
		issued by Mint Terminius branch. Xerox copy of the service certificate assued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff	Ex. No Mi M2). Date 17-11-87 16-07-88	Description Xerox copy of the settlement. Xerox copy of the settlement.
W21	11 11-97	issued by Mint Terminius branch. Xerox copy of the service certificate assued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank	Ex. No M1 M2 M3	17-11-87 16-07-88 27-10-88 09-01-91	Description Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the settlement.
W21 W22	11 11-97 Në	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.	Ex. No M1 M2 M3 M4	17-11-87 16-07-88 27-10-88 09-01-91	Description Xerox copy of the settlement.
W21	11 11-97	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate	Ex. No MI M2 M3 M4 M5	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96	Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation
W21 W22	11 11-97 Në	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. Xerox copy of the reference book on staff matters. Vol. 111 consolidated upto	Ex. No M1 M2 M3 M4 M5 M6	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95	Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation proceedings. Xerox copy of the order in W.P.
W21 W22 W23 W24	11 11-97 NE NO 06-18-97	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. Xerox copy of the reference book on staff matters. Vol. 111 consolidated upto 31-12-95. Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.	Ex. No M1 M2 M3 M4 M5 M6	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91	Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation proceedings. Xerox copy of the order in W.P. No.7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. Xerox copy of the order of Supreme Court
W21 W22 W23	11 11-97 Në Në	issued by Mint Terminius branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the service certificate issued by Thousand Lights branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions. Xerox copy of the reference book on staff matters. Vol. 111 consolidated upto 31-12-95. Xerox copy of the call letter from Madarai Zonal Office for interview of messenger.	Ex. No M1 M2 M3 M4 M5 M6 M7	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91 15-06-98	Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation proceedings. Xerox copy of the order in W.P. No.7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.

नई खिल्ली, **19 जुलाई, 200**7

का,आ, 2183,—अँग्रोगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट वेंक ऑफ इण्डिया के प्रविधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध 🖣 निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार और्छागुक अधिकरण चेन्ह्रें के पंचाट (संदर्भ संख्या 238/2004) को प्रकाशित करती है, जो कैन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> l सं. प्ल-12012/467**/98-आई**,आर.(बी-1)] अजय कुमार, इंस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2183.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 238/ 2004) of the Central Covernment Industrial Tribunal-cum-Labour Coult, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank. of India and their workmen, received by the Central Government (vir. 19-7-2007)

> [No.L-12012/467/98-IR (B.1)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBLINAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 238/2004

(Principal Labour Court CGID No. 165/99)

In the matter of the dispute for adjudication under chase (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

S.f. J. Thomas

I Party/Peritioner.

AND

The Assistant Deneral Manager, State Bank offindia.

: If Party/ Management

Z. O. Chennai.

APPEARANCE

For the Peticioner

Sti V. S. Ekamberara.

Authorised Representative.

For the Management

Mrs. K. Veeramann.

Advocates:

AWARD

 The Central Government Ministry of Labour, vide. Order No. 1.: \$2012/467/98 Bk (B-I) dated 12 ft2-1999 has referred this dispute earlier to the Tannil Nucle Principal Labour Court/Chennai and the said labour Court has raken the dispute on its file as CGED No. 165/99 and issued notices. to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 238/2004.

2. The Schedule mentioned in that order is as follows:--

"Whether the demand of the workman Shri, J. Thomas, wait list No. 478 for restoring the wast list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is enrighed /**

3 The allegations of the Peritioner in the Claim. Steament are briefly as follows :---

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Hank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary hasis at Nungamhakkam, branch from 1986. The Petitioner was crally informed that his services were no more required. The non-employment of the Petitioner and other became subject matter before Supreme Court in the form of Writ Petition filed by State. hank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Pedesation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement Was under consideration once again and they classified the workmen under three outegories namely A. B. and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the presumbed format through Branch Manager of the Nungambakkam branch. He was called for an interview by a Committee appointed by Respondent/Hank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petirioner was informed orally to join at the branch where he initially worked as class IV employee. From 1986, the Petitioner has been working as a temperary messenger and some times. performing work in other branches also. While working on temporary basis in Chindadriper branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service. during the same period. While the Petirioner was working as such, the Manager of the branch informed the Penitsoner neally on 31-3-97 that his services are not required any more such the need not suggest the office from 1-4-97. Hence,

the Petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication: Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitinger, be has made a fresh representation to Govt, to reconsider the reference and the Potitional requested the Respondent Bank to continue to engage hith in service as obtained prior to 31-3-97 and to regularize him in service in the course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement by which his services and number of days worked by high after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officet. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Parther, the settlements are repringuant to Section 25G & 25H of the I.D. Act. The remination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single walt list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, fiedical benefits etc. to the remporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious biffemities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular corployment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Peritioner was not in continuous service. Hence the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The sequement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law. retrenchment and implemented by Respondent/Batik. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated / (7-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of LD. Act, In terms thereof, the Petitioner was considered for permanent appointment as per his oligibility along with similarily placed other temporary employees and the Petitioner was wait listed as candidate No. 478 in wait list of Zonal Office, Chennai. So for 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is faise to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of scallements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary who employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were sugaged for 240 days were to be considered and under category (B) the temporary 270 days aggregate temporary service in thy continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days, aggregate temperary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off the date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31. 12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retinament scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due in the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees. were appointed and since the Petitioner was wait fisted at 478 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from quentoning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the ecuntry. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per semiements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casma labour. Further, for circle of Chemasi wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by Employment Exchange and baving undergone medical evantination, the Petitioner has fulfilled the criteria set out b) the Respondent/Bank for selection of candidate for appointstient to the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right ensiteined in the Constitution of India. In the year 1998, the Responden/Bank has issued a circular to the effect that under no direumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondem/Bank imposed total has for his future coupleyment. Even though these were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6 Again, the Petitioner filed a rejoinder to the Councer Statement of Respondent, wherein it is stated all the scale medes made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(2) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions Iaid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to a lege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in this favour.
- 7 b: these circumstances, the points for my consideration are—
 - (i) "Whether the demand of the Petitioner in Wait List No. 478 for restoring the wait fist of temporary messenger in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (F) "To what reitef the Petitioner is emitted?"

Point No. 1:

- In this case, on behalf of the Petitioner it is contended that the Peritioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in pertnament vacaircies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 342 (civil) 1987, the Respondent/Bank hurrically entered. into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time. of final hearing of the Writ Polition. This settlement has became an exhibit of the Respondent/Bank and has been marked as Ex.M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not hinding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or octice denied an opportunity to work in the bank after 31-3-1997. and therefore, they have ruised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for teinstatement with back wages and other attendant henefits.
- On behalf of the Petitioner, it is consended that these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularization of service of the temporary employees and any settlement in this regard is reduction; and in any case. the Petitioner is not bound by settlement under Section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in continuous period. of 12 calendar months and was not in continuous service. on 17-11-1987, therefore, they have no valid and enforceable. right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitiones working for 240 days does not arise at all. Further, they have invoked the relevant provisions. of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enterceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S.

SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enseted only for the benefit of the workreen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is unterrable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex.M8 which constitute/relate to the circular instructions. of the Respondent/Bank issued from time to time in connection with the implementation of the acttlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averneous of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex.M1 deals with categorization of retrenched temporary employees into Λ_1 B, and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come first go' or' first come last go' and therefore, the categorization in Clause 1 is illegal. Clause I(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as perbank's eleculars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should be given permanent appointment in the bank service. Those casuals were given more beneficial treatment to the matter of arriving 21 qualifying service for interview and selection. But. temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alteged to have prepared only one, wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. Mt., M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that sentlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement

with regard to this wait list. Further the Hon'ble High Court has beld in its order dated 23-7-99 in W. P. No. 7872 of 1991. which is marked as an exhibit, in which it is stated that it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages. as per Bipartite Settlement white the 1988 settlement dealt. with daily wager in Class IV category who were paid wages. daily on mutual agreement basis. In such circumstances, as rightly contended the respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat on: class and their action undoubtedly amounts to violation of article 14 of Constitution of India.' Further, the averment of MW I and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or prepetrated by the Respondent/back by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process. of selection and were paid wages on the basis of industrywise settlement, it is not so to in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casual as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been propared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. MH) does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex.M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Cheunai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex.M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temperary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(00) of the LD. Act, 1947. Though the Petitioner's

work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorization as such is not valid and the provisions of Sastry Award are also violated. hurther, the representative of the Petitionar relied on the ratings reported in 1985, 4 SOC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein in the Supreme Court has held that "to employ workmen as "padlics" casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workman is illegal". I carned expresentative further contended that Ex.M10 wait dist has not incen prepared in accordance with principle of senionity in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex.M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in after violation and in breach of it. Though clause 2(c) of Fk. M4 states that candidates found suitable for permanes: appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or possing within the prescribed period, he will be deemed. 10 have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW I. Therefore, the termination of the Peritioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of sendement on absorption of nemporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a carry of minutes of conciliation proceedings dated 9.6-75 before Regional Labour Commissioner (Contral), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M? and Mal interior orders passed by High Court of Mairus in WMP No.11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed. of in the year 1999 and therefore, they do not have any begring in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence or Respondent/Bank has no application to the Petitioner's page. The Petitioners have completed the service of 240.

days and more in a continuous period of 12 calendar menths. as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Peritioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings. reported in 1985 If LLL 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer learner mean that those days. only when the workmen worked with hammer, sickle or pen but most necessarily comprehend ail those days during which they were in the employment of the employer aid: for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc." It is further argued that call letters. produced by the Peritioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement. on account of settlements/lapsing of wait lists and not of these Peritioners some of them have completed 240 days. and more in a continuous period of 12 catendar months. and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midsucani. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view. of the facts and discumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not amborated. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafule and are made with uiterior motive. Further, they have cancealed the material facts that the Petitioner was wait listed as per langth of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank

was cogaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary measenger is also incorrect, they were engaged against leave vacancies. The sentement entered into by the Respondent/Bank and the federation. were hour ficie which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991. I LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Va INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union. entered into a settlement with the management settling the Caim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised. a plea before the Tribunal that they did not resign. voluntarity. But the Andhra Pradesh High Coun has held that "in the absence of plea that the settlement reached in the course of conciliation is vitigted by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 IT LLU (189) ASHOK AND OTHERS Vs. MAHARASHIRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that Therefore a settlement arrived at in the course of the conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even these who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law φ)ntracts, the object obviously is to uphoid the sanctity of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rollings reported in 1997 I LLI 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "'settlements are divided intotwo categories namely (i) those arrived at outside the conditiation proceedings under section [8(1) of the I.D. Act and (ii) those arrived at in the course of conciliation. proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties. to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached. with a representative union of which the contesting

workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AJR 2000 SC 469. NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has bold that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not home fide in nature or that it has been arrived at on account of fraud, migrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel. for the Respondent contended that though it is alleged. that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the domand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Perilioner contended that the retrenchment made by the Respondent/Bank is not valid and be has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that overe wording of reference is not decisive. in the matter of tenability of a reference and he refied on the rulings reported in 1998 LAB IC 345 SECRETARY, KÖLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference. is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery. again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitionemo find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service: or not for which he relied on the rulings reported in 1998. LABIC 1664 VAN SAG NATHAN OREMTPAPER MILLS. Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunai. cannot go bellind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatefuly held that the Labour Court should not attempt to codsider the order under reference in a technical manner or a gedantic manner, but should consider the order of reference it a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 (he Supreme Court has held that "the Tribunal" has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the mattner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. it should consider the order of reference in a fair and reasonable manner, though the order of reference is not bappily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though to the reference, it is not mentioned that whether the retrenchment. is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings. of the Peritioners and can decide whether the Peritioner is: entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as allejed by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, dow the Petitioner cannot question that he should be reinstated in service and he relied on the rolings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs.; K.V. VUEFSH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination

acquires a right of appointment in Govt, service in an existing or a future vacancy ". In that case, pruning of select list op reduction in number of vacancies was made. in view of the impensing absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining. selectees were given appointments according to their comparative merits. In which, the Supreme Court has beld. that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He for their relied on the rollings reported in 1997 6 SCC 584 SYNDIC ATERANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year onlyand that inclusion of their names in the panel was not toconfer on them any right to seek personnent appointment. in the services of the hank. Considering the object with which the panel was prepared and the fact that it was a yearty panel exparing on 6-2-98, we are of the opinion that: the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional rightthey had come to an end with the expiry of the canel. The claim of the Respondents as comained in the W.P. was thus, misconcesved and therefore, the learned Single Judge. and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal. respectively." He further relied on the rolings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates." included in ment list has no indefeasible right to appointment even if a variancy exists" and relying on ail these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and isince there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannor be said that preparation of want list was made with mala fide. monive. Under such direumstances, after the expiry of the date namely 31-5-1997, the Petitioner cannot pread for restoration of the wall list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB RC 2168 STATE OF HARYANA AND ORS, VS. PIARA SINGH AND OTHERS wherein the Supremo Court has held that 'mow coming to the direction that all those ad but temporary employees who have continued for more than a year should be regularised, we find a difficult to sustain it. The carection. has been given without reference to the existence of a vacancy. The direction is effect means that every ad-box / temperary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means treation of a vacancy: (b) be was not sponsored by Employment Exchange nor was he appointed in automatic of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time. of his appointment: (d) his record of service since his

appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale. unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rute of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must he moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 HSOC LASHWAN! KUMAR AND OTHERS Vs. STATE OF RIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts-"So for as the question of confirmation of these employees whose corry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an integular manner or on all how basis against an available, vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incombent on such a nonexisting vacancy would never survive for consideration and even if such purported regularisation or confirmation. is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them. valid confirmation. The so called exercise of confirming these employees, therefore, remained a nutlity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to extigencies and they have not appointed against any regular Vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption. in the Respondent/Bank, Further, he relied on the rulings reponed in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these, circumstances, their disengagement from service cannot be exhibitude to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are unly daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on

the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD.Act retrenebreent procedure following principle of "last come - first go" is not mandatory but only directory. on sufficient grounds thown, the employer is permitted to depart from the said principle retrenching seniors and retaining junious. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking scryice, he has not established with any evidence that his junious were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that be has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with

 Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC | SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to burgain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever be gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpensage illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court white laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified. persons, the same would not confer any right on the appointed...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuumes, if the original appointment was not made by following a due: process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL PERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of

appointment and if appointment is made without following the rules, the same being a pullity, the question of confirmation of an employee upon the expiry of purported period of probation would not strike." Further, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUIANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it i is not disputed that the appointment of the Respondent was not in sanctioned post, Reing a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16 of the Constitution of India would be void in law. 7 Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION V.S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days. of service by that itself would not confer any legal right upon him to he regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this count probably having regard. to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the sculed legal position, as noticed hereinhefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim negutarisation of his service. Further, when they have not been questioned the five settlements intered into between the Respondent/Bank. and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment. thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned. in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

i7. I find much force in the contention of the learned counse! for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard in preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement not the number allotted in each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not abona fille in nature or it has been arrived at our occupant of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances. I find the Petitioners cannot now question the settlements at this

stage and since they are only temporary employees and sance it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, thus Tribunal had ordered for reinstatement with back wages and these disputes are also similar in pature and hence, the Petitioners are suffiled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt, in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Peritioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work. I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Distated to the P(A), transcribed and typed by firm, corrected and pronounced by the lin the open court on this day the 31st January 2007.1

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WWT Still Thomas

WW2 Sri V.S. Ekambaram

For the Respondent MWTSri C. Mariappan

MW2 Sn C. Ranalingam

Documents Marked :---

Do. No	o. Date	Description
W	0:888	Xerox copy of the paper publication in daily Thanthi based on Ex.M1.
W2	20404-88	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex.M1.
W3	34-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

		•••			
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex.W4	W22	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pundi
W 5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying	W23	31-03-97	Xerox copy of the apointment order to Sri. G. Pandi.
w 6	15-03-97	sevice to daily wagers. Xerox copy of the Circular letter of Zonal Office, Chennai About filling up of	W24	Feb. 2005	Xerox copy of the pay slip of T.Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
₩7	25-02-97	vacancies of massenger posts Xerox copy of the circular of	W 25	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary
-17	247	Respondent/Bank to all Branches regarding indentification of massenger			employoes from the panel of wait list
		vacancies and filling them before 31-3-97.	W26	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for smotion of messenger staff.
W8	Nil	Xerox copy of the instruction in Reference Book on staff about casuals not to be engaged at office/baranches	W27	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
		to do messeageriel work	W28	09-07-92	Xerox copy of the settlement between
W9	N a	Xerox copy of the service certificate issued by Nungambakkam Branch.			Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of
Wio	21-05 -94	Xerox copy of the service certificate issued by Nungambakkam Branch.	W29	07-02-06	part time general attendants.
WII	10- 06-94	Xerox copy of the service certificate issued by Royapettah Branch.	TP 23	V/-02-00	Xerox copy of the local Head Office circular about Coversion of part time employees and redesignate them as
W12	07/02/95	Xerox copy of the service certificate issued by Elephant Gate Branch.	W30	31-12-85	general attendants. Xerox copy of the local Head Office
W13	14-11 -95	Xerox copy of the service certificate issued by Nuogambakkam Branch.		👡	circular about Appointment of temporary employees in subordinate
		Material by 1400 gabitoas carri prigricis.			
W]4	10-06-97	Xerox copy of the service certificate	Row #	e Farmed	cadre.
·		Xerox copy of the service certificate issued by Nungambaldam Branch.		_	cadre. mi/Management :—
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·		Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch Xerox copy of the administrative	Ex. N	o. Date 17-11-87	cadre. mt/Management:— Description
wiğ	12-06-97	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch	`Ex.N	Desc 17-11-87 16-07-88	cadre. mt/Management:— Description Xerox copy of the settlement.
wiğ	12-06-97	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate.	Ex. No MI M2	17-11-87 16-07-88 27-10-88	cadre. Description Xerox copy of the settlement. Xerox copy of the settlement.
WIŠ	t2-06-97 Na	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.	Ex. No MI M2 M3	17-11-87 16-07-88 27-10-88 09-01-91	cadre. **Management : Description Xerox copy of the settlement. Xerox copy of the settlement. Xerox copy of the settlement.
wiğ	12-06-97	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate.	Ex. No MI M2 M3 M4	17-11-87 16-07-88 27-10-88 09-01-91	cadre Description Xerox copy of the settlement.
WIŠ	t2-06-97 Na	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch. Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff matters Vol. III consolidated upto	Ex. No MI M2 M3 M4 M5	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96	Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation
W15 W16 W17	12-06-97 Nil Nil 06-03-97	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 Xerox copy of the call letter from Matterai Zonal Office For interview of messenger post—V. Muralikannan	Ex. No MI M2 M3 M4 M5 M6	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95	Description Xerox copy of the settlement. Xerox copy of the reinutes of conciliation proceedings. Xerox copy of the order in W.P. No. 7872/91.
W15/ W16 W17	t2-06-97 Nii	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—V. Muralikarman	Ex. No. M1 M2 M3 M4 M5 M6 M7	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91	Description Xerox copy of the settlement. Xerox copy of the reimites of conciliation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P.
W15 W16 W17	12-06-97 Nil Nil 06-03-97	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—V. Muralikarman Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj	Ex. No. MI M2 M3 M4 M5 M6 M7 M8 M9	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91 15-05-98 10-07-99	Description Xerox copy of the settlement. Xerox copy of the minutes of conciliation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. Xerox copy of the order of Supreme Court in SLP No. 3082/99. Xerox copy of the wait list of Chemnai Module.
W15' W16 W17 W18 W19	12-06-97 Nil Nil 06-03-97 06-03-97	Xerox copy of the service certificate issued by Nungambakkam Branch. Xerox copy of the service certificate issued by Chintadripet Branch Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions. Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95 Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—V. Muralikaman Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj	Ex. No. M1 M2 M3 M4 M5 M6 M7 M8	17-11-87 16-07-88 27-10-88 09-01-91 30-07-96 09-06-95 28-05-91 15-05-98 10-07-99	Description Xerox copy of the settlement. Xerox copy of the reinutes of conciliation proceedings. Xerox copy of the order in W.P. No. 7872/91. Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa. Xerox copy of the order of Supreme Court in SLP No. 3082/99. Xerox copy of the wait list of Chemnai

गर्ह दिल्ली, 20 जुलाई, 2007

बर.आ. 2184.—औद्योगिक विकाद अधिनियम, 1947 (1947 का 14) की थां। 17 के अनुसरण में, केन्द्रीय सरकार स्टेट वेंक ऑफ स्वित्वा के प्रबंधतंत्र के संबद्ध वियोधकों और उनके कर्मकारों के बीच, अनुबंध में विद्युट औद्योगिक व्यवाद में केन्द्रीय सरकार औद्योगिक अधिकंदन, वेंबई के पंचाट (संदर्भ संख्या 227/2004) को प्रकाशित करवी है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

> [सं. एल-12012/429/98-आईआः(बी-1)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O. 2184.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 227/2004) of the Central Government Industrial Tribanal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

[No.L-12012/429/98-JR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 227/2004

(Principal Labour Court CGID No. 126/99)

(In heatmatter of the dispute for adjudication under clause(d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maznagement of State Bank of India and their workmen)

DETWEEN

Sti M. Ashok Kumar

: I Party/Petitioner

AND

The Apsistant General Manager, : If Purty/Management State Bank of India, Z.O. (Thennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekamberen,

Authorised Representative.

For the Management

: M/s. K. S. Sunder Advocates.

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/429/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemai and the said Labour Court has taken the dispute on its file as CGID No. 126/99 and issued notices to both parties. Both sides entered appearance and filed

their claim statement and Counter Statement respectively. After the constitution of this-CGIT-cum Labour Coun, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD,No. 227/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Sho M. Ashok Kumar, wait list No.468 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periamet branch from 19-3-1983. The Petitioner was orally informed that his services were on more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees! Union in Writ Perition No. 542/87 which was taken up by the Suprame Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement. under Section 18(1) reached between management of State Bank of India and Ali India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Perlamet branch. He was called for an interview by a Committee appointed by Respondent/Rank in this regard. But, they bave not informed the result of interview and also with regard to appointment. But, the Peritioner was informed orally to join at the branch where he initially worked as a class IV employee. From 13-3-1984, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in HVF Avadi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3 1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for

adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govi. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service. in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it cugaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award, Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, have, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait fist suffers serious informities and it is not based on strict seniority and without any rationals. Hence, for all these reasons the Petitioner prays to grant relief of regular corployment in Respondent/Bank with all attendent benefits.

 As against this, the Respondent in its Counter. Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The seulement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bong fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 cowards. Such of those employees who are claiming permanent absorption and when their case was esponsed by State Bank of Jadia Staff. Federation which resulted in five settlements dated 17-11-1987, 16-07-1988,07-10-1988,9-1-1991 and 30-7-1996.

The said settlements became subject matter of conciliation. proceedings and minutes were drawn under Section 18(3). of LD. Act. In terms thereof, the Pesitioner was considered. for permanent appointment as per his aligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 466 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary. candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid. and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The neculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, our of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 466 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped: from questioning the settlements directly or indirectly and his claim is hable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plan. It is not correct to it say that documents and identity of Petitioner was verified . before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlemesus, vacancies upto 31-12-94 were filled up against the waited list of temporary

employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennal wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical. examination, the Petitioner has fulfilled the criteria set out by the Respondent/Hank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate catire of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right enshriped in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Blank imposed total ban for his future employment. Even though there were sufficient number of vacancies in chass IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrafily filling up the vacancies with the persons. other than wait listed workmen according to their whims. and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions tail down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 468 for restoring the wait list of temporary messengers in the Respondent/Back and consequential appointment thereupon as temporary messenger is justified?"

- (a) "To what relief the Petitioner is entitled?"Point No. 1:
- In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies, in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefus.
- 9. On hehalf of the Petitioner, it is contended that these Petitioners were recruited as remporary employees. in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by settlement under Section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner. has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees. at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days dues not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Ys. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not esacted only for the benefit of the workmen to whom Section 25F applies. but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category. of retremthed workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are attrutory in character. Further, a combined study of Es. MI and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex, M1. deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first. go' or first come -- last go' and therefore, the categorization. in Clause 1 is illegal. Clause 1 (a) of Ea. M1 provides an opportunity to persons who were engaged on casual basis. and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories. of temporary comployees is not valid. Purther, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.WR, Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly probibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible estegories is not valid. Therefore, these persons. who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those caspals were given more beneficial. reatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as perinstructions in Ex.W2 four types of waiting fists have to be prepared. But the Respondent/Hank has alleged to have prepared only one wait list for each module as per Ex. M 10. in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it. was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ext. ML M3 and M4 respectively. But, when MW1 has spoken about the scillements, he deposed that settlement dated 27-10-68 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his hald

statement. Further, according to MW1 want list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Purther the Hon'ble High Court has held in its order dated 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement. was concerned with the temporary class IV employees who were paid scale wages as per Bipartile Settlement while the 1988 settlement dealt with daily wager in Class IV category. who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent. are not justified and combined the list of candidates covered. under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averagent of MW1 and the statements in Counter. Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals. with unequals, it is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise settlement, it is nut so in the case of casnals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides. for the same corms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 and 16 of Constitution. of India. Therefore, the Petitioner contended that preparation of Ex. M 1 namely wait list is not inconformity. with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2. circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment. and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions. and ceased to have the credibility attached to the wait list. Above all, Ex. M I was not produced at the time of conciliation proceedings held during the year 1997-98 held. at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners. were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or other the settlement, on absorption of temporary employees, the expression that

that hey were edgaged in leave vacancy was used as a device to ake them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sadry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SOC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has hold that "to employ workmen as "badlies" casuals ortemporaries and to continue them as such for many years. with the objectiof depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 west list has not been prepared in accordance with principle of seniority. In the legal sense, since the selected candidates with longest service should have priority over those who joined. the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acred in accordance with the law and the spirit of the settlement, but in ofter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or gosting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the apspective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till flate, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Hank is arbitrary, male fide and illegal and the Respondent/Hank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and MI1 interior orders passed by High Court of Madras in WMP No.11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post

reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners completed. the **BETYICE** 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25P of the Industrial Disputes Act, therefore, their retrendment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are cutitied to the benefits under the provisions of LD. Act. It is further consended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays. and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rolings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that thuse days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either unider express or implied contract of service or by compulsion of statute, standing orders etc." It is further. argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted. the interview and selected the temporary employees who have reported to have submitted their application forabsorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners. were in employment as sub staff in early 1980s but were denied further engagement on account of seulements/ lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass en award in their (ayour,

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estupped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the 1D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with afterior movive. Further, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly be was wait listed and therefore. the Peritioner is estopped from questioning the settlement. directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported in 1991 [11,14323 ASSOCIATED GLASS] INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the jub and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has beld that "in the absence of plea that the settlement reachest in the course of conciliation is vitiated by fraud, misrepresentation or energion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189. ASHOK AND OTHERS Vs. MAHARASIITRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union. will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity. of settlements reached with the active assistance of the Conciliation Officer and to discourage an individual comployee or a minority union from scottling the settlement." It further held that "there may be exceptional cases, where there may be allegations of male fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLI 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it

will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing umeasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAIASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bone fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counselfor the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not hinding on them and he is estopped from disputing the

1]. Learned connsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY. KOLLAM ILLAHOTEL AND SHOP WORKERS' UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the point

workman; to hardship involved in moving the machinery again". If further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of reforing to answer the reference on merits". Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service (it not forjubich he relied on the rulings reported in 1996 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Bradesh High Court has held that "the Tribunal connot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner of a pedantic manner, but should consider the order of reference in a fair and reasonable marmer". He also argued that in Express Newspapers (P) Ltd.'s case reported to AER 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Coun is expected to decide the real nature of disputes between the parties and with that object in view, it should gonsider the order of reference in a fair and reasonable manner, though the order of reference is nor happily framed nor was it framed to the high expectation of the Labour Court". Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Peckinners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is criticled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without apy substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to bim or 161? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14 Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wort list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS by, K.V. VUEESH wherein the Supreme Count

has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Covt. service. in an existing or a future vacancy ". In that case, pruning of select list on reduction in austber of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining. selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory". He further relied on the rulings reported in 1997 6 SCC 584. SYNDICATE BANK & ORS. $V_{\rm S}$. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the hank informed the Responsions that the panel was valid for one year only and that inclusion of their names in the pane? was not to confer on them any right to seek permanent appointment is the services of the bank. Considering the object with which the panel was prepared and the fact than it was a yearly punct expiring on 6-2-98, we are of the opinion that the Respondence did not get any right because of inclusion of their names in the said panel for perigonent absorption in the services of the bank. Whatever conditional right they had come to an end with the expreyof the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively": He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH $m V_{SC}$ UNION OF INDIA wherein the Supreme Court has held that "candidates included in morialist has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petisioner has no right to question. the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such disconstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, Vs. PIARA SINGHAND OTHERS wherein the Supreme Court has field that "now coming to the direction that all those subject temporary employees who have continued for more than a year should be regularised, we find a difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every adhoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means treation of a vacuuty; (b) he was not aponsored by Employment Exchange for was he

appointed in pursuance of a nutification calling for applications which means he had entered by a back door, (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the merc continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rate of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfithing the qualifications, it cannot be held that in each and every case, such a direction must follow: irrespective of and without taking into account the other. relevant circumstances and considerations. The relief must he moulded in each case having regard to all the relevant. facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impagned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SOC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Poll Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these camployees." whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed capdidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a nonexisting vacancy would never survive for consideration. and even if such purported regularisation or confirmation. is given, it would be an exercise in futility. It would amount to decorating a still born haby. Under these circumstances, there was no occasion to regularise them or to give them. valid confirmation. The so called exercise of confirming these employees, therefore, remained a nothty." Therefore, tearned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular. vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption. in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The

concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage carployees and have no right to the posts, their disengagement is not arbitrary". He further relied on the rulings reported in 1994 3 LLF (Supp) 754 wherein the Rajasthan High Count has held that "Under Section 250 of the LD. Act retreachment procedure following principle of 'last come - first go' is not mandatory but only directory. on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining junions. Though in this case, the Petitioner has alloged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued first even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee: or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made perspanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant' rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes, it may be true that he is not in a position to bargain -not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone; it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Putther, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strongth of such continuance, if the original appointment was not made by following a duc-

process of selection as envisaged by relevant rules. Purther, in CDJ 2006 SC 443 NATIONAL PERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has hald that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of lettle, the Appellata for the purpose of recamiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constituțional scheus enstrined under Article 14 and 16 of the Educations of India would be void in law." Further, io 2006 \$ LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Va. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon high to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the waite of prevailing market economy, globalisation, privations and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16 Relying on all these decisions, learned coursel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Purther, when they have not been questioned the five settlements emeral into between the Respondent/Bank and Pederation and since they have not questioned the want list prepared by the Respondent/Bank, they are not matitled to dispute the same and they are estopped from doing so Further, their penyer before the labour authorities was only to restore the wait list and also for appointment thereon is temporary meaninger as per wait list. Under such circumstances, after expiry of the period mentioned in the septements which were subsequently amended by settlements, the Petitioners cunnot now question either the preparation of wait list or manber allotted to them. Under such circumstances, it cannot be questioned by the Petitiones.

17. If find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitibners have made so many allegations with regard to preparation of wait list and also scattements entered into between the Respondent/Bank and Pederation, at the time of reference, they have not questioned the settlement nor the manter allotted to each individual is the wait list. Porther, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona

fide in nature or it has been arrived at on account of male. fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240. days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes to the policy. decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing isevident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Pennoner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any reflet as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007,)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WWI Sri M. Ashok Kumar

WW2 Srt V, S, Ekambaram

For the Respondent: MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam

Documents Marked: --

Ex. No. Date

Description

 \mathbf{w}_1

01-08-88 Xerox copy of the paper publication in

daily Thanthi based on Ex. M I.

 \mathbf{w}_{2} 20-04-88

Xerox copy of the administrative guidelines issued by Respondent/Bank

for implementation of Ex. Mi.

[भाग	ा ≔खण्ड	3(ii)) भारत का राजपत्र : अनस	đ 4,	2007/बाव	FF (3, 1929 5009
₩3	2 4 4 9 1	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wages in	WIS	31-03-97	Xerox copy of the appointment order to Shri—G. Pandi.
W4	01-05-91	massenger vacancies. Xerox copy of the advertisement in The	W20	Peb. 200:	Xerox copy of the Pay Slip of T. Selter for the month of February 2005 wait list No. 395 of Madurai Circle.
		Hindu daily wages based on Ex. W4.	W21	13-02-95	••••
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagner.			Circular Letter about Hagaging supporary employees from the penci of wait list.
W6	15-03- 9 7	Xmus copy of the circular letter of Zmal Office, Chemni about filling up of vacancies of masseager posts.	W22	9-11-92	Xerux copy of the Head Office circular No. 28 regarding Norms for america of masterner staff.
W7	25-03-97	Respondent/Bank to all Branches	W2 3	9-7-92	Xerox copy of the minute of the Biperite meeting.
		regarding industrification of manager vacancies and filling them before 31-3-97.	W24	09-7-92	Xerox copy of the settebacar between Respondent/Bank and Ali India Staff Bank of India Staff Federation for
W/8	Ni	Xerox copy of the instructions in Reference Book on Staff about casuals not to be engaged at office/branches to			implementation of norms-creation of part time general attendents.
		de mentengarial work.	W25	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time
wy	17-08-88	Xerox copy of the service certificate issued by Perjamet Beanch.			employees and redesignate them as General Attendants.
W10	05-01-98	issued by Chetpet Branch.	W26	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary
WII	12-01-98	Xexox copy of the service certificate issued by Chieradripat Branch.	7a	ha W arrana d	employees in subordinate cades.
W12	Nil	Xerox copy of the administrative	For the Respondent/Admagnment :— Ex. No. Date Description		
		guidelines in Reference Book on Staff Matters issued by Respondent/Bank	MI	17-11-87	Xeron copy of the actilement,
		regarding recruitment to appointment	M2	16-07-88	Xerox copy of the settlement.
33714	L 60	care & service conditions.	мв		Xerox copy of the settlement.
W13	Nii	Xerox copy of the Reference Book on Staff Matters Vol. III committated upto	M4		Xerox copy of the settlement.
		31-12-95,	MS		Xerox copy of the settlement.
₩14	06-03-97	Xarox copy of the spli letter from Madurai Zonal Office for interview of messenger post—V. Marabikannan	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
WI5	06-03-97	Xerox copy of the call letter from Madami Zonal Office for interview of messenger	M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
		post—K. Subbanj,	Mß	15-06-98	Xerox copy of the order in O. P.
W16	06-03- 9 7	Xerox copy of the call letter from Madural Zonal Office for interview of messenger post—J. Velmuragan.	M9	10-07 -99	No. 2787/97 of High Court of Orless. Xerox copy of the order of Supreme Court in SLP No. 3082/99.
Wi7	17-03- 9 7	Xwox copy of the envice particulars —J. Vehanogen.	MIC	NET	Xerox copy of the west list of Chemni Module.
W18		Keroz copy of the letter advising selection of part time Menial— G.Pandi.	MII		Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 20 जुलाई, 2007

का,आ. 2185,—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया की प्रबंधतंत्र के संबद्ध निकेशकों और उनके कर्मकारों के भीच, अनुशंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण नेक्हें के मंखाट (संदर्भ संख्या 226/2004) को प्रकाशित करवी है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ मा।

> [सं. एस-12012/435/98-आईआर(बी-1)] अवद कुमार, द्रेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O. 2185.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 226/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Amexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2337.

[No. L-120] 2/435/98-FR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

> ₩ednesday, the 31st January, 2007 PRESENT

Stark. JAYARAMAN, Presiding Officer Industrial Dispute No. 226/2004 [Principal Labour Court CGID No. 125/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri R. Chedgalvarayan.

: IParty/Petitioner

AND

The Assistant General Manages, State Bank of Iodia,

: II Party/Management

Z. O. Chengai.

APPEARANCE

For the Petitioner

: Sri.V.S.Ekamberam,

Authorised Representative

For the Management

: M/s, K.S, Sundar,

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. 1-12012/435/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Cheprat and the said Labour Court has taken the dispete on its file as CGID No. 125/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the Constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 276/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shink. Chengalvarayan, wait list No.375 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as emporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub stuff in Class IV cadre in State. Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Mint Terminus branch from 2-2, 1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and rakers became subject-matter before Supreme Court in the form of Writ Petition filled by State. Bank Employees' Union at Writ Petition No. 542/87 which was taken up by the Supreme Count. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State. Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mint. Terminus branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But; they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 2-2-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working . on temporary basis in Ayanavaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitiousz raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Peritioner, he has made a fresh representation to Govi. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service. in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not men't consideration. The Petitioner was not a party to the actilement mentioned by the Respondent/Rank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular. service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whim and fancies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious informities and it is not based on strict seniority and without any rationale. Mence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all agrendant benefits.

As against this, the Respondent in its Counter. Statement alleged that reference made by the Govt. (or adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of 1D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner conceated the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank sugaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1**991** and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was contidered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 375 in wait list of Zonal Office, Chemiai. So far 357 with listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Peritioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retreachment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B and C. Considering their temporary service and subject to other chigibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service m any calendar year after 1.7.75 or minimum 70 days aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 375 he was not appointed. The said settlements were bong fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Purther, the said settlements were not questioned by any union so far and the settlements of hank level settlements and operated throughout the country. The Tamit Nada Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bunk and this Tribunal has an jurisdiction to extertain such plea. It is not correct to , say that documents and identity of Pentioner was varified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chemiai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out. by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petidoner as he has acquired the valuable right enshriped in the Constitution of India. In the year 1998, the Respondent Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in merial category, thus, the Respondent/Bank imposed total ban for his future. employment. Even though there were sufficient number of vacancies in class TV category, the Respondent/Bank deliberately/delayed in filling up the vacancies by the wair. listed workspen with attenior motive. The Respondent/Bank. has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims. and fancies.[Hence, the Petitioner prays that an award may be passed in his fawner.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are :
 - (i) "Whether the demand of the Petitioner in Wait List No. 375 for restoring the wait list of lemporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"
 Point No. 1:

- In this case, on behalf of the Petitioner it is: contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary. basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank harriedly. entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court. at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an apportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that. these Peritinners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank in the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers.

and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Ys. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retremched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex, W2, W3and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come- last go' and therefore, the categorization in Clause 1 is idegal. Clause 1 (a) of Ex.M1 provides an opposituality to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of tempocary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference. Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular measurgerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given. permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this. amendment which includes casuals affecting their interest. and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepered only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as metsengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Rx.M(0 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras. circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW I wait list under Ex.M10 was prepared on 2-5-92 but. there is no pleating in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear. that the 1987 settlement was concerned with the temporary. class IV employees who were paid scale wages as per-Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987. settlement and 1988 settlement since they furmed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MWI and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated. by the Responden/Hank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait fist under Ex.M10 comprises. of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter. of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not isconformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, to wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Forthermore, wait list under Ex. M10 does not carry particulars about the candidates. date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in **Violation of instructions and ceased to have the credibility** attached to the wait list. Above all, Ex. Mil was not produced at the time of concitiation proceedings held during the year 1997-98 bold at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribanal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temperary employees,

the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (o) of the J.D. Act., 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Potitioner has performed the duties continuously which is still in etistence, the categorisation as such is out valid and the popyisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINOH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Sopreme Court has held that "to employ workmen as "baddies clasuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait. list has not been prepared in accordance with principle of seniority in the legal sense, since the selected cardidates with longest service should have priority over those who joined the service latter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad id law, Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement. but in undr violation and in breach of it. Though clause 2(e) of Fri. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a dandidate fails to accept the offer of appointment or posting within the prescribed period, be will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to abow hips he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the avirtment of MW). Therefore, the termination of the Petitioner who was in regular service of the Respondent Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central). Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M1) interim orders passed by High Court of Mactres in WMP No.11932/91 in W.P. No.7872/91 ccased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the crossexamination had become apparent that they have no personal (mowledge about the settlements which are marked as Fx. M3 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes past reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the industrial Disputes Act, therefore, their retreachment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service of the Responsion of Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and bence, they have also completed 240 days in a period of 12 calendar. months. He also reticd on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V_{3} . MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually' worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner with clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrencturient is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Potitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour 1

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estupped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Purther, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was weit listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLU 323 ASSOCIATED GLASS INDUSTRIES LTD. V. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Prodesh High Court has held that "in the absence of plea that the sentement reached in the course of concillation is vitiated by froud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent (orther relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND O'THERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage un individual employee or a minority union from scuttling. the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 LLLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category mude with a recognised majority union has extended application as it will be binding on all workner of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contenting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contexting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "sentlement is certified at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bana fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned coursel for the Respondent contended that though it is alleged that they are not parties to the scattement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retranshment made by the Respondent/Bank is not valid and be has to be reinstanted in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Pethtoner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor

workman ib hardship involved in moving the machinery again." It fluther held that "the Tribunal should look into the pleading ead find out the exact nature of pleading of the Petitioder to find out the exact nature of dispute instead of refusing to answer the reference on ments." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rolings reported in 1998 LABIC 164 VANSAGNATHAN ORIENT PAPER MILLS Vx INDUSTRIAL TRIBUNAL & ORS. wherein the Maditys Prodesh High Court has held that "the Tribunal cannot go behind the Jerms of reference, but that does not mean that it cannot look into the pleadings of partles." He also relied on the rdlings reported in 1998 LAB IC 1507 A. SAMBANTHAN V), PRESIDING OFFICER, LABOUR COURT, NADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to donsider the order under reference in a technical manner or a pedamic manner, but should consider the order of referenced in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should doosider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed our was it framed to the high expectation of the Laboral Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the plendings it is clear that the Petitioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is cutitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the astilement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the minors of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the relings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has

held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining sciccrees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 199768CC584SYNDICATEBANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearty panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Styreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with male fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the ralings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PLAKA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-har/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for

applications which views he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends to several years. Purther, there can be no rate of hugh in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularite employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow: irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the selevant. facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Sopreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 LISEC I ASHWANI KUMAR AND OTHERS Va. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on orl-hoc basis against an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a multity." "Therefore, learned counsel for the Raspondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 Sec 3657 HIMANSHU KUMAR VIDYARTHI & ORS V& STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to

such an extent as to cover these employees. Since they are only daily wage employees and have no right to the pasts. their disengagement is not arbitrary." He further relied on the religes reported in 1994 3 L.L.J (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the J.D. Act remembraces procedure following principle of 'East come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching actions and retaining juniors. Though in this case, the Petitioner basalleged that his juniors have been made permanent in banking service, he has not established with any evidence that his junious were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. in such circumstances, the prayer for reinstatument in the services of Respondent/Bunk cannot be given to the Petitioner and, therefore, the claim is to be dismissed with CORES.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temperary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be shanrhed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of sciention at envisaged by relevant roles. It is not open to the Court to prevent regular recrustratest at the instance of temporary amployees whose period of employment has come to un end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or carnal in nature is not aware of his employment. He accepts the employment with open eyes. It may be tree that he is not in a position to bargain not at arms length since be might have been scarching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegislatics. and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Purther, the Supreme Court while laying down the law, has elearly held that "unless the appointment is in terms of the relevant. rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further,

in CDI 2006 SC 443 National Fertilizers Ltd, and Others V_{3} . Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment." and if appaintment is made without following the rules, the same being a nullity, the question of confirmation of an couple) yes by on the expiry of purported period of probation. would not arise." Further, in CDJ 2006 SC 395 Municipal. Council., \$ujanpur Vs. Surinder Kumar, the Supreme Counhas held that "it is not disputed that the appointment of the Respondent was not in sanctioned post, Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its croployees was bound to follow the recruitment rules. Any commitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Futher, In 2006 2 LLN 89 Madhya Pradesh State. Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more (han 240 days of service by that itself involid not confer any legal right upon him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position. *8 noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment. thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner. :

17. If ind much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement hor the number altotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or

other inducements. Under such direumstances. I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is emitted?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined: -

For the Petitioner

WW1 Sri R. Chengalvarayan WW2 Sri V. S. Ekambaram

For the Respondent

MW1 Sri C. Mariappan MW1 Sri C. Ramalingam

Documents Market:-

Ex. No Date

Description |

Wt 1-8-8k

1-8-88 3

Nesox copy of the paper publication in

daily Thanthi based on Ex. M1.

W2 304-88

Xerox copy of the administrative audelines issued by Respondent/Rook

guidelines issued by Respondent/Bank

for implementation of Ex. M_{\perp} ,

₩3	2 4 4 9 1	Xerox copy of the circular of Respondent/Bank to all Branches	W21	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
		regarding absorption of daily wagers in Messenger vacancies.	W2 2	31-3-97	Xerox copy of the of the appointment order to Sri O. Pandi.
W4	1-5-91	Xezox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W23	Feb. 2005	Xerox copy of the gay slip of T. Sekar for the mouth of February, 2005 wait list No.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W24	13-2-95	395 of Madurai Circle. Xerux copy of the Madurai Module.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office. Chennai about filling up of	W2 5	9-11-92	Circular letter about Engaging temporary comployees from the panel of wait list. Xerox copy of the Head Office circular
w7	25-3-97	vacancies of messenger posts. Xarox copy of the circular of			No. 28 regarding Norms for straction of messenger staff.
		Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W26	9-7-92	Xerox copy of the minutes of the Bipertite meeting.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W27	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part time general attendants.
W9	22-2-84	Xerox copy of the service certificate issued by Mint Terminus Branch.	W28	7-2-06	Xerox copy of the local Head Office circular about Conversion of part time
W10	18-7 -9 5	Xerox copy of the service certificate issued by Mint Terminus Branch.			employees and redesignate them as general attendants.
WJJ	23-5-96	Xerox copy of the service certificate issued by Ayanavaram Branch.	W29	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate
W 12	14-3-97	Xerox copy of the service certificate issued by Thousand Lights Branch.	_	_	cadre.
WI3	16 -4-9 7	Xerox copy of the service certificate issued by Mint Terminus Branch.		ne Mespona o. Date	ent/Management : Description
W14	16-4-97	Xerox copy of the service certificate	Ml	17-11-87	Xerox copy of the settlement.
		issued by Ayanavaran Branch.	M2	16-7-88	Xerox copy of the settlement.
WI5	Nī	Xerox copy of the administrative guidelines in reference book on staff	MB	27-10-88	Xerox copy of the settlement.
		matters issued by Respondent/Bank	M4	9-1-91	Xerox copy of the settlement.
		regarding recriainment to Subordinate Care and Service Conditions.	MS	30-7-96	Xerox copy of the settlement.
W16	Nī	Xerox copy of the Reference Book on Staff maters Vol. III consolidated upto	M6 .	96-95	Xerox copy of the minutes of conciliation proceedings.
W17	6-3-97	31-12-95 Xerox copy of the call letter from Madurai	M7	28-5-91	Xerox copy of the order in W.P. No.7872/91.
		zonal office for interview of messenger post —V. Murailkannan.	ME	15-5-98	Xerox copy of the order in P. O. No. 2787/97 of High Court of Crissa.
		Xerox copy of the call letter from		10-7-99	Marox copy of the order of Supreme Court
W18	6-3-97	Madurai zonal office for interview of messenger post—K. Subburaj.	М	10-7-37	in SLP No. 3062/99.
W18 W19	63-97 63-97	Medural zonal office for interview of	M10	NU	

नई दिल्ली, 20 जुलाई, 2007

वन अत. 2186.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, कोन्दीय सरकार, स्टेट बैंक ऑक इंग्डिय़ा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अंतुर्वध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्ध संख्या 225/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-7-2007 को प्राप्त हुआ था।

[सं एल-12612/428/98-आईआर(बी-I)] अंबय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007.

S.O. 2186.—in pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 225/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

(No. L-12012/428/98-TR (B-I) AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007
PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 225/2004 (Principal Lubour Court CGID No. 124/99)

(In he mandr of the dispute for adjuditation under clause(d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri M. Elumblai

: [Party/Petitioner]

AND

The Assistant General Manager, : Il Party/Management State Bank of India, Z.O. Chennii.

APPEARANCE

For the Petitioner

 Sri V. S. Ekamberam, Authorised Representative

For the Management

: M/s. K.S. Sundar, Advocates

ALL VIIÇA

AWARI)

1. The Central Government, Ministry of Labour virte Order No. La12012/428/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nada Principal Labour Court, Chermai and the said Labour Court has taken the dispute on its file as CGID No. 124/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD, No. 225/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri M. Flomali, wait list No.465 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupen as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petiriquer in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mammidi branch from August, 1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Perition filed by State Bank Employees' Union in Writ Petition No. \$42/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State. Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mannadi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From August, 1984, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. White working on temporary basis in Kothur branch, another advertisement by the Respondent/Bunk was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the

matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petrikmer, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularize him in service in due course. The Respondent/Bank took up an unreasonable scand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which bis services and number of days wasked by him after interview do not merit consideration. The Petitioner was not a party 10 the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522 (4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not ubserved the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Peritioner is estopped from making claim as per Claim Statement, The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Responden/Bank. The claim of the Petitioner is not bonu fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down to seriority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1967, 16-07-1988, 7-10-1988, 9-1-1991 and 30-7-1996.

The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. in terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.465 in waitlist of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to aflege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were sugaged. for more number of days and hence, they were appointed. Under the actilement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary comployees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for semiority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 465 he was not appointed. The said actilements were bana fittle which were the only workable solution and is binding on the Petitioner. The Petitioner is estupped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said sentements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nado Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As perscattements, vacancies upto 31 · [2-94 were filled up against the waited list of emporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/cassal laboure. Purther, for circle of Chemni wait list of daily wages was not finalized and hencement published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petilioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to diamiss the claim with costs.

- In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Retpondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged to the messenger post in the subordinate cache of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enstarized in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circomstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed to filling up the vacancies by the wait listed workings with ulterior motive. The Respondent/Bunk has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Count in W.P.No.7872 of 1991, the Petitioner questioned the aettlement dated 27.10-88 and 9.1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:—
 - (i) "Whether the demand of the Peritioner in Wait List No. 465 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:-

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in suburdinate cadre on tempurary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly cotered into a scattlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition, This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex . M i. The Petitioner in this case: and the Petitioners in the connected cases attacked this seulement as it is not binding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retreachment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant henefits.
- 9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in commonous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the I.D. Act and it is preposterous to contend that the Petitioner. has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Positioners who are retrenuled measungers and are eligible to be reinstated. Learned representative for the Petitioser

contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/ Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W6 as well as Fix. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MW[and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A. B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come-first go' or 'first come-last go' and therefore, the categorization in Clause I is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on cusual basis and allowed to work in leave/casual vacancies of messengers, facashes, cash coolies, water buys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly probibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. These casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/ Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and aweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was propared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M 1, M 3 and M 4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wait list. Purther the Hon ble High Court has beld in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of cabdidates covered under 1987 sculement and 1988 sculement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behulf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of cusuals. Therefore, both belongs to two different and distinct categories. But, Ex.M 3 provides for the same norms to the causals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India, Therefore, the Petitioner contended that preparation of Ex.M I namely wait list is not in conformity with the instructions of Ex.M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in "The Hindu" dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of midal appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ea. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not provinced. at the time of conciliation proceedings held during the year 1997-98 hold at Chermai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees. the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (00) of the LD. Act, 1947, Though the Petitioner's work in the Respondent/Bank is continuous and though the Pediconer has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Purther, the representative of the Petitioner relied on the rulings reported in 1985 4 SQC 201 H.D. SBNGHV₂ RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as "badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the walt list under Ex. M10 which has been drawn up is contrary to hiw and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in later violation and in breach of it. Though chanse 2(e) of Ex. M4 states that candidates found suitable for permatient appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed. to have refused it and the name shall stand deleted from the respective panel and be shall have no further claim for being quasidered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary to evidence in support of the averment and also feel the averment of MW I. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, male fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings. dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5, Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no

application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section. 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is fillegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/ Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II. LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V_{3} . MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and sciented the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub stuff in early 1980s but were denied further engagement. on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as bewas positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business. exigency for the performance of duties as messanger. i-orther, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as remporary messenger is also incorrect, they were engaged against leave vacancies. The actilement entered into by the Respondent/Bank and the federation were bounfide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly be was wait hated and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements. and operate throughout the country. Further, he relied on the rulings reported to 1991 HLLJ 323 ASSOCIATED GLASS. INDUSTRIES LTD, V_{A} INDUSTRIAL TRIBUNAL A.P.: AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received tempinal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent. further relied on the rulings reported in 1997 II LLJ 1189. ASHOR AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Beach of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union. will be binding on all workmen of the establishment, even those who belong to the minority union which had objected. to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of sertlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from southing the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the 1.D. Act and (ii) those arrived at in the course of conciliation proceedings. under section 16(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised. majority union has extended application as it will be binding. on all workmen of the establishment. Even in case of the

first entegory, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workenen also." He further relied on the, rulings reported in AJR 2000 SC 469 NATIONAL ENGINEERING ENDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the frac will of the parties and is a pointer to these being good will between there. When there is a dispute that the settlement is not bone fide in manure or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject autier of yet another industrial dispute which an appropriate Govt. may refer for adjustication after examining the allegations. as there is an underlying assumption that the settlement reached with the belp of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner it also one among them. they have entered into settlement with the bank and therefore, it is binding on the Petitioner, Further, he argued that no opion of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not bloding on them and he is estopped from disputing the samé.

11. Learned counsel for the Respondent further confinded that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the writ list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of temblidity of a reference and he relied on the ratings reported in 1998 LAB IC 345 SECRETARY, KOLLAM IILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal carnot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleasing and find out the exact nature of pleasing of the Petitioner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which be relied on the ratings reported in 1998. LABIC 1664 VAN SAGNATIJAN ORIENT PAPER MILLS Vs. IND@STRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN V_5 , PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order. of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC;569 the Supreme Court has held that "the Tribunal has pristiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes; between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Count." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenelifhent is valid or not, from the pleadings it is clear that the, Petitioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is emitted to go into the question whether the relief project for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14: Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings, reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that; "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination. acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number. of vacamines and consequently, a certain number of bottom. persons were reasoved from the select list and the remaining. selectees were given appointments according to their comparative merits. In which, the Supreme Court has held. that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS VS SHANKAK PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter duted 7-2-87 the bank informed the Respondents that the panel was valid for one year only. and that inclusion of their names in the panel was not toconfer on them any right to seek permanent appointment. in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional mehtthey had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge: and the Division Beach, when it first decided the appeal were right in dismissing the Writ Petition and the appeal. respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH V√ UNION OF INDIA wherein the Supreme Court has held that "candidates." included in ment list has no indefensible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no made fide on the part of the Respondent/Bank in preparing the wait list, it cannot he said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner camon plead (or restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS, V2. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction i has been given without reference to the existence of a vacancy. The direction in effect means that every ad-lase/ temporary employee who has heen continued for one year. should be regularised even though (a) no vacancy is āvāliāble for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time.

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us to para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it estneet be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of hamb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 ILSEC I ASHWAN) KUMAR AND OTHERS VA STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be unted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on 4d-hnc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is prauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a mullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank, Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHIT KUMAR VIDYARTHI & ORS Va STATE OF BIHAR AND ORS, wherein the Supreme Court has hold that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot he construed to be a retrenchment under the l.D. Act. The concept of retreachment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of "last come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his jumors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SOC 1 Secretary, State of Kamataka Vs. Uma Devi, the Supreme Court has held that merely because a temporary employee or a casual wage. worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employers whose period of employment has come to an end or of adhad employees who by the very nature of their appointment. do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to hargain not at arms length since he might have been scarching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not he appropriate to jettison the constitutional scheme of appointment, perpensate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while taying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointed...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged: by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Lad, and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore,

is not a mode of appointment and if appointment is made. without following the rules, the same being a nuflity, the question of confirmation of an employee upon the expire of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur $V_{S_{\gamma}}$ Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law," Further, in 2006 2 LLN 89 Madhya Prádesh State Agro Industries Development Corporation (Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself, would not confer any legal right upon him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor he has been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not emitted to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the scalentents which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Feritoper.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitionest have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature for it has been arrived at on account of mala fule, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and sinte they are only temporary employees and

since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstutement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.
- 19. But I find since the Supreme Court has held that temporary employees are not insided to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outspurcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2;

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Perinoner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any reiself as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by the in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner WW1 Sri M. Fahumalai

WW2Sri V. S. Ekambararn

For the Respondent MW1 Sri C. Mariappan

MW2 Sri C. Ramalingam.

Documents Marked ;-

Ext. No	k Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
₩2	3U-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M.f.
W 3	2 4 4 9 1	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W25	06-03-97	Xerox copy of the call letter from Machani Zonai Office for interview of massenger post—J.Vekmurugan.
V 5	20-8-91	Xerox copy of the advertisement in The Hindu extending period of qualifying	W26	17-03-97	Xeroa copy of the service particulars— L'Velmunigan.
V6	15-3-97	service to daily wagers. Xerox copy of the circular letter of Zonal Office, Chemal about filling up of	W27	26-03-97	Xerox copy of the letter advising selection of part time Menial—G.Pandi
_	*****	vacancies of messenger posts.	W28	31-03-97	مهنداند و مراسم
N 7	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before	W29	Feb.2005	Xerox copy of the pay slip of T. Sekar for the mouth of February, 2005 wait list No. 395 of Markurai Circle.
WB	No	31-3-97. Xerox copy of the instruction in Reference book on staff about casuals	W30	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W 9	16-9-87	nut to be engaged at Office/Branches to do messengerial work. Xerox copy of the service certificate	W31	09-11-92	No. 28 regarding Norms for sanction of
wy	10-5-07	issued by Mannedi Branch.		00 00 00	messenger staff. Xerox copy of the minutes of the Bipartit
WIO	1-8-88	Xerox copy of the service certificate issued by Mannadi branch.	W32	09-07-92	meeting.
WH	30-9-9 3	Xerox copy of the service certificate issued by Elephant Gate branch.	W33	09-07-92	Xerox copy of the settlement betwee Respondent/Bank and All India Stat Bank of India Staff Federation fo
W12	19-10-94				implementation of norms—creation of part time general attendants.
WI3	3-10-94	Xerox copy of the service certificate issued by HVF Avadi branch.	W 34	07-02-06	
W14	13-09-96	issued by Avadi branch.			employees and redesignate them a general attendants.
W15	22-01-96	Xeros copy of the service certificate issued by Elephant Gate branch.	W 35	31-12-85	circular about appointment of temporar
W16	15-03-96	Xerox copy of the service certificate			employees in subordinate cadre.
W17	10-03-97	issued by Nungambakkam branch. Xerox copy of the service certificate	For the Respondent/Management:		
77.7	10-00-37	issued by LHO Chennai branch.		o. Date	Description
W18	11-03-97	Xerox copy of the service certificate	MI		Xerox copy of the settlement.
		issued by Thousand lights branch.	M2	16-07-88	
W 19	17-06-97	Xerox copy of the service certificate issued by Elephant Gate branch.	MB	27-10-88	
CI TAN	us de 05		M4	09-01-91	
W20	15-07-97	issued by Kottur breach.	M5	30-07-90	
W2l	Ni	Xerox copy of the administrative guidelines in reference book on stuff	M6	(9-06-93	proceedings.
		matters issued by Respondent/Hank regarding recruitment to subordinate	M7	28-05-9	No.7872/91.
W22	Ni Ni	cathe & service conditions. Xerox copy of the Reference book on	M8	15-05-94	 Xerox copy of the order in O. P. N 2787/97 of High Court of Orissa.
		Staff matters Vol. III consolidated upto 31-12-95.	M9	10-07-9	 Xerox copy of the order of Supreme Co in SLP No. 3082/99.
W23	6-03-97	 Xerox copy of the call letter from Madural Zonal Office for interview of massenger post—V Muralikaman. 	Mio	N	Xerox copy of the wait list of Chent Module.
₩3⁄	+ 0 6-03-9 7	Xerox copy of the call letter from Madoria Zonal Office for interview of massenger post—K. Subburaj	M11	25-10-9	 Xerox copy of the order passed in Ct No.16289 and 16290/99 in W.A. It 1893/99.

मई दिल्ली, 20 जुलाई, 2007

का. 38. 2187.— औद्योगिक क्वियाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट वैंक ऑफ इण्डिया के प्रयंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 230/2004) को प्रकाशित करती है, को फेन्द्रीय सरकार को 20-7-2007 को अस्त हुआ था।

> [सं एल-12012/436/98-आई आर(बो T)] अंबय कुमार, डेस्क अधिकारी

New Delhi, the 20th July, 2007

S.O.: 2187,—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No 230/2004) of the Central Government, Industrial Tribunal-cura-Labour Court, Chemnal as shown in the Annexure in the Industrial Dispute herween the management of State Bank of India and their workmen, received by the Central Government on 20-7-2007.

JNo. L-12012/436/28-IR (B-I)] AJAY KUMAR, Desk Officer ANNEXURE

BEFURE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESEN)

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 230/2004

(Principal Labour Court CGID No. 149/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

RETWEEN

Sri E. Ashokan

: 1 Party/Petitioner

AND

The Assistant General Manager, : II Party/Management State Bank of India, 7. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambarana,

Authorised Representative

For the Management

 M/s. K.S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. Lat 2012/436/98-JR (B-I) dated 10-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 149/99 and issued applices to both parties. Both sides entered appearance and filed their clasm statement and Counter Statement respectively. After the constitution of this CGIT com Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LO.No. 230/2004.

The Schedule montinued in that order is its follows:

"Whether the demand of the workman Shri E. Ashokan, wait list No.374 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment therespon as temporary messenger is justified? If so, to what relief the said workman is colinted?"

3. The allogations of the Peritioner in the Ciaim Statement are briefly as follows

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ambattar branch from 20-9-1984. The Petitioner was orally informed that his services were to more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by Stare Bank Employees" Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its rounter, filed a capy of settlement under sections [B(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A. B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Paritioner also submitted his application in the prescribed format (arough Branch Manager of the Ambattur branch. He was called for an interview by a Committee appointed by Responden/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 20-9-1984, the Petitioner has been working as a temporary measeager and sometimes performing work in other branches also. While working on temporary basis ir, MRL Matsali branch, another advertisement by the Respondent/Bank was made regarding casual workers who were deported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on [31,3-1997 that his services are not required any more and he need not attend the office from

1-4. 1997. Hence, the Petitionits raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Clove to reconsider the reference and the Publisher requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the scalement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service in unjust and illegal. Further, the sentements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been Regularising according to their white and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work underassumed name or by both which amounts to unfair labour practice. The wait list suffers actious informities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all aucodant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in fieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in semority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was expoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988,07-10-1988, 9-1-1991 and 30-7-1996. The said settlements became subject-matter of consiliation proceedings and minutes were drawn under section 18(3) of 1.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 374 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only is leave vacancies as and when it arose. When the Publisher having submitted to selection process in trains of aettlements drawn as per retrenchment provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar mouths were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temptrary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid scillements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 374 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Purther, the said settlements were not questioned by any union so (ar and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/ Bank and this Tribunal bas no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent measurages. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/carsal labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been spousored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent Bank is duty bound to regularize the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Hank has issued a circular to the affect that under no circumstances, wait listed persons like the Petitioner be sugaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed worknism with otherkar motive. The Respondent/Bank has been artificately filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act, As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Highee, the Petitioner prays that an award may be passed in his favour.

- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 374 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment

- thereupon as temporary messenger is justified?"
- (ii) "To what relief the Potitioner is entitled?" Point No. 1:—
- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been appropried by Employment Exchange and they having been called for interview and having been selected and wait fisted in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary besis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Penison No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final bearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. MI. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and iflegal and they further prayed for reinstatement with back wages and other attendant benefits.
- 9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter VA of the LD. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retreached messengers and are eligible to be reinstated. Learned representative for the Peritioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retreachment is not enacted only. for the benefit of the workmen to whom Section 25P applies. but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Rz. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are etatutory in character, Purther, a combined study of Ex. MI and the avenueuts of MWI and MW2 and their testimonics during the cross-exemisation will clearly show how the bank has given a raw deal to the Peritioner from the beginning linking his future with the settlements. Purther, Clause 1 of Ex. M! deals with categorization of retreached temporary employees into 'A, B and C', but this categorization of 'A, H & C' is quite opposed to the doctrine of "last come-first." go" or first come—last go" and therefore, the categorization in Clause I is Hiegal. Clause I(a) of Ex.M1 provides an opportunity to persone who were engaged on casual basis and allowed to work in leave/casnal vacancies of messengers, farashes, cush coolies, water boys, aweepers esc. for absorption along with the other eligible categories of temporary employees is not valid. Purther, engaging casuals to do mesagagerial work in in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Porther, the appointment of chily wage basis for regular messengerial jobs etc. are structly prohibited as per bank's eleculars/marractions. In such circumstances, the absorption of causals along with the cligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given promonent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and relection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as perinstructions in Rs. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M (0) in this case. Those candidates under Ex.M10 were found. suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10. was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated [7-11-87, 27-10-88] and 9-1-91 which are marked as REM1, M3 and M4 respectively. But, when MWI has spoken about the

actilements, he deposed that actilement dated 27-10-88 was not included in the Madrus Circle since the High Court owicz is there, but he has not produced any document in support of the so called son-inclusion except his hold. statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no plenting in the Counter Statement with regard to this wan list. Purther the Hon'ble High Court has held in its order dated 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that "it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Ripartite Settlement while the 1968 settlement dealt with daily wager in Class IV category who were poid wages daily on motoul agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of confidence covered. under 1987 scatterment and 1988 settlement since they formed. two distinct and expensis classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter. Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combine aquals: with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and nonmeaningerial condiducts. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywine settlement, it is not so in the case of casuals. Therefore, both belones to two different and distinct categories. But, Ex. M3 provides. for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that proposation of Ex.M 1 namely want list is not inconformity. with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ea. W2 circular regarding projected vacancies for the period from 1987 to 1994. Purthermore, no wait list was released/ published even after the Court order in WMP No. 11932/91 in W.P.No.7572/91 directing the Respondent/Bank to release the list of successful candidates purplent to the first advertisement published in The Hinds dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive 'at their respective seniority. Proce all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. Mil was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chemai and Madumi and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal meeting it as a confidential document. It is fauther contended on behalf of the Petitioner that though

the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave viacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Apt, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Alward are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 2014LD, SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ (workmen as 'badlies casuals or temporaries' and to contidue them as such for many years with the object of depriving them of the status and privileges of permanent workings is illegal." Learned representative further contemded that E_{λ} , M10 wait list has not been prepared in accordance with principle of semiority in the legal sense, since the selected candidates with longest service should have pribrity over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be differed appointment against existing future vacancy. anywhore in module or circle and in case, a condidate fails to accept the offer of appointment or posting within the prescritied period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived. at the seniority and till date, it is a mystery as in who that senior vias and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interimtorders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ccased to have any relevance when the main writ has been disposed of in the year 1509 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M3 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in contimious service of the Respondent/Bank and they are entitled to the benefits under the provisions of LD. Act, It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected 1.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and bence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rollings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION V_3 . MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in tile midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were put in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent Bank was engaging temporary cruployees due to business exigency for the performance of duties as messenger. Further, the allegation that he was spousored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The scalement entered into by the Respondent/Bank and the Pederation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the sement and accordingly he was wait listed and therefore, the Petitioner is estapped from questioning the settlement directly or indepently and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 TLLL 323 ASSOCIATED GLASS INDUSTRIES 1.TD, Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Anchra Pradesh High Court has held that "In the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 (1 LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even these who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even correction or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rutings reported in 1997 l LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Squiteting Court has held that "settlements are divided into two

caregories namely (i) those arrived at ontaide the contribution proceedings under section 18(1) of the LD. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has similarly application and binds merely parties to it and scillement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the scuttement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the sentement, it must be binding on the contesting workmen also." He further relief on the rulings reported in ATR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. VA. STATE OF RAIASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govi. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation of ficer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner, Further, he argued that no union of the bank has questioned the sculement and in such circumstances, it cannot be said that it is not binding on them and he is estepped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY. KOLLAM RILLA HOTEL AND SHOP WORKERS UNION Vy. INDUSTRIAL TRIBUNAL, KOLLAM wherein the

Kerala High Court has held that "mere wording of reference is not declisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material thefore it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the mechinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioper to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998. LABIC 1644 VANSAGNATHAN ORIBNT PAPER MILLS Vs INDUSTRIAL TRIBUNAL & ORS, wherein the Machiya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the relings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, NADRAS, wherein it has been hald that "it has been repeatedly held that the Labour Court should not attempt to donsider the order under reference in a technical manner or a pedantic manner, but abould consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd's case reported in AIR 1993 SC 500 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication, The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high espectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or hot, from the pleadings it is clear that the Petitioners have been retreached from the Respondent/ Hank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is justified to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining selectoes were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 19976SCC584SYNDICATEBANK & ORS Va SHANKAR PAUL AND OTHERS wherein the Supreme Court has beld that "by its letter dated 7.2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH V≥ UNION OF DVDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Peritioner has no right to question. the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, is carnot be said that preparation of wait list was made with male fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him, Further, he relied on the ralings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those adhor temporary employees who have continued for more than a year should be

regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every *ad-hoc*/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Estployment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not oligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in pera 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale. unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impropred. directions must be held to be totally antenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS $V_{\rm K}$ STATE OF BIHAR AND OTHERS wherein the Pull Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of configuration or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry fuelf is unauthorised and is not against any sanctioned vacuumcy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born buby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a millity." Therefore, learned counsel for the Respondent. contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave

vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Va STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary couployees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the LD. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of 'last come-first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent/ Bank. Any bow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this. Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with ensis.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC | SECRETARY, STATE OF KARNATAKA YS, UMA DEVI, the Supreme Court has held that merely because a temporary employee. Of a Casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant indea. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain —not at arms length since he might have been searching for some employment to as to eke out his livelihood and accepts whenever he gets. But on that ground alone, it would not be appropriate to jetting the constitutional acheme of appointment, perpensise illegalities. and to take the view that a person who has temporarily or casually got employed should be directed to be continued. permanently. By doing so, it will be creating another mode: of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly hold that ""unless the appointment is in terms of the relevant.

rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would nor be entitled to be absorbed in regular service or made. permanent thereby on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. " Further, in QDJ 2006 SC 443 NATIONAL FERTILIZERS. LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made. without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Purther, in CDJ 2006(SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER, KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in senctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to fullow the recruitment rules. Any recruitment made in violation of such rules as also in violation of conscitutional scheme enshrined under Article 14 and 16. of the Constitution of India would be void in law." Further, in 2006 2 LLN BY MADHYA PRADESH STATE AGRO INDUSTRIÉS DEVELOPMENT CORPORATION $V_{\rm S}$ S.C. PANDEY, wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court at so hold that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the puticy decisions of the Government in the wake of plevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Rélying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is pot entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements jentered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned. in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circulastances, it cannot be questioned by the Petitioner.

27. I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim. Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements. entered into between the Respondent/Bank and Federation. at the time of reference, they have not questioned the settlement nor the number alkotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bonafide in nature or it has been arrived at on account. of malafide, misrepresentation, traud or even corruption or other inducements. Under such direumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Responden/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Responden/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard in the changes in the policy decisions of the Government in the wake of prevailing market economy, globulisation, privatisation and nursourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/ Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service of made permanent merely on the strength of such continuance of work. I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by one in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner : WW! Sri R. Ashokan

WW2 Sri V. S. Elrambaram

For the Respondent : MW | Sri C. Marjappan

MW2 Sri C. Ramalingam

Documents Marked:				6-3-97	Xerox copy of the call letter from Madorai zonal office for interview of messenger
Eu. No. Date Description				zonal office for interview of messenger post — I. Vehiningan.	
WL	L-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.	W 19	t7-3-97	Xerox copy of the service particulars— I. Vetmurugan.
W 2	20-4-88	Xerox copy of the administrative guidelines issued by respondent/Bank	₩20	26-3-97	Xerox copy of the letter advising selection of part time Meniul—G. Pandi.
W3	24-4-91	for insplementation of Ex. M1. Xerox copy of the circular of	W21	31-3-97	Xerox copy of the appointment order to Sri G. Pandi.
		Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W22	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the roomh of February, 2005 with list No. 395 of Madurai Circle.
W4	I-5-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.	W23	13-02-95	Circular letter about engaging temporary
W5	20-08-91	Xeron copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.	W24	09-11-92	employees from the panel of wait list Xerox copy of the Head Office circular No. 28 regarding norms for senction of
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of mesocage: posts.	W2 5	09-07-92	messenger staff. Xerox copy of the minutes of the Bipartite meeting.
₩7	25-3-97	Xero copy of the circular of Respondent/. Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W26	09-07-92	Kerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—caration of
₩B	NA.	Xerox copy of the instruction in Reference book on staff about casmis not to be engaged at office/branches to do messangerial work.	W 27	07-02-06	part time general attendants. Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W 9	4-1-88	Xeros copy of the service certificate issued by Ambuttur Branch.	W28	31-12-85	
W10	9-6-88	Xerox copy of the service certificate issued by Ambettur branch.			employees in subordinate cadre
Wil	10-6-88	Xerox copy of the service certificate issued by SIDCO Industrial Estate	For the Respondent/Management :		
			Ex. N	o. Date	Description
		Branch.	MI		Xerox copy of the settlement.
WI2	10-4-97	Xerox copy of the service certificate issued by MRI, Branch.	M2		Xerox copy of the seniement.
W13	9-6-97	Xerox copy of the service certificate issued by Avadi Branch.	M3	27-10-88	• •
W 15			M4		Xerox copy of the settlement. Xerox copy of the settlement.
W14	NE	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.	M5 M5		Xerox copy of the minutes of conciliation proceedings.
			M 7	28-06-91	
W 15	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto	MB	5-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Count of Orisss.
W16	6-3-97	31-12-95. Xerox copy of the call letter from Madural.	MB	10-07-99	Court in SLP No. 3382/99.
TT 10	A. 2-31	zonal office for interview of messenger post—V. Muralikannan.	MIO	M	Xerus copy of the wait list of Chemia Module.
WI7	06-03-97	Xerox copy of the call letter from Madural zonal office for interview of messenger post—K. Subburaj	МП	25-10- 99	Xerox copy of the order passed in CMF No.16289 and 16290/99 in W.A. No.1893/99.

नई दिल्ली, 23 जुलाई, 2007

का. 2188. — कर्मकारी राज्य जीमा अधिनियम, 1948 (1948 का 34) की धारा-1 की उप धारा (3) द्वारा प्रदत्त शिक्षियों का प्रयोग करते हुए, कंन्द्रीय सरकार एतद्द्वारा ? अगस्त, 2007 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याद- । (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय- । और धारा-77.78, 79 और । के सिवाय जो पहले हो प्रवृत्त हों के विश्वाय जो पहले हो प्रवृत्त हों के विश्वाय जो पहले हो प्रवृत्त हों के विश्वाय जो पहले हो प्रवृत्त होंगे, अर्थात,

"नगर निगम सुधियाना की सीमाओं के अन्तर्गत आने काले सभी क्षेत्र सिवाए उनके जिन पर कर्मकारी राज्य बीमा योजना पहले से लागू है।"

> [सं एस-38013/20/07-एस.एस.-1] एस. दो. जेमियर, अयुर सचिव

New Delhi, the 23rd July, 2007

S.D. 2188.—In excercise of the powers conferred by sub-section (3) of Section I of the Employees' State informace Act, 1948 (34 of 1948) the Central Government inceby abyoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter N and VI [except sub-section (1) of Section 16 and Sections 77, 74, 79 and 81 which have already been brought into force; of the said Act, shall come into force in the following area: in the State of Punjab namely:—

"Areas i ithin the limits of Municipal Corporation Ludhiens except the areas already untified under ESI Scheme*

> [No. S-38013/20/2007-S. S. I] S. D. XAVIER, Under Secy.

नई दिल्ली, 23 जुलाई, 2007

का अर. 2189,— कर्मचारी राज्य बीमा अधिनियम, 1948 (1943 के 34) को धारा-1 की उप बारा (3) द्वारा प्रश्त शकितकों का प्रयोग किस्ते हुए, केन्द्रीय सरकार एतदहारा । उरगस्त, 200? को उस तैसीखं के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याद-4 (44 व 45 धारा के खिलाय जो पहले से प्रवृत्त हो चुकी है) अध्याप-5 और 6 [धारा-76 की उप बारा (1) और धारा-77,78. 79 और हो। के मिश्रय को पहले ही प्रवृत्त को बर चुको है) के उपजन्म राषस्थान के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात्, :--

"विला- सि हो। सहसील पिष्डबाड़ा के सबस्य प्रामी पिष्डबाड़ा [पहले से ही कर्मर र सम्म चीमा अधिनियम 1948 की बास-1 (3) के तहत कार्यान्त्रः क्षेत्र को छोड़कर] हाम्होली, बीलर, अजारी, कांटल, वीर्वाड़ा, पगराई, सिवेस, मृरी, इन्दरा, केस्ल्यपादर, राजपुरा, केशवर्गक, असम्बरी, आहला, इण्डविसी, मालप, वरखी, कुण्डाल, कालुम्बरी, बाबेला, क्षंत्र, वागदरी, नवाबाम, गढ़िया, कोजस, जनपुर, झंकर, च्यांसी, जारशास को अन्तर्गत आले बाले क्षेत्र।"

> [सं. एस-38013/21/07-एस.एस.-I] एस. चो. जेबियर, अवर समिय

New Delhi, the 23rd July, 2007

S.Cl. 2189.—In excercise of the powers conformed by sub-section (3) of Section 1 of the Employees' State Insurance Act. 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sob-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Rajasthan namely:

"The areas comprising the revenue villages of Pindwara [Excluding the areas already implemented UIs 1(3) of the ESI Act, 1948]. Inadoli, Beelar, Ajari, Kantai, Veetwara, Parlai, Siveta, Moori, Undra, Kerlapadar, Rajpma, Keshawganj, Aamali, Sadalwa, Thandiveri, Malap, Varali, Kundal, Kalumbari, Sabela, Dhanga, Vagadari, Nawawas, Gadiya, Kojara, Janapur, Jhankar, Chawarli, Araasana in Tehsil Pindwara, District Sirohi."

[No. S-38013/21/2007-8, S I] S.D. XAVIER, Under Secy.

नई दिल्ही, 19 जुलाई, 2007

कारआ, 2190.— औद्योगिक विवाद अर्धिनियन, 1947 (1947 का 14) की पारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट कैंक ऑफ इंग्डिया के प्रबंध श्व के संबद्ध निर्माककों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, वेजई के पंचाट (संदर्भ संख्या 132/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-07 को प्राप्त हुआ था।

> [सं. एल-12012/424/1998-आईआर(बी-1)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007.

S.O. 2190.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chemiai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7 2007.

[No.L-12012/424/1998-IR (B-I)] AJAY RUMAR, Desk Officer A**NNEXURE**

SEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 132/2004

[Principal Labour Court CGID No. 130/99]

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

MICTARREN

C. Rajendran (deceased)

: I Party/Petitioner

AND

The Assistant General Manager,

: Il Party/Management

State Bank of India, Region-L Tricky.

APPEARANCE

For the Petitioner

: Sri V. S. Ekamberam,

Authorised Representative

For the Management

M/s. K. S. Sunder,

Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/424/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 130/99 and issued notices to both parties. But the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT-cam-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 132/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim. Statement and Counter Statement respectively.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri C. Rajendran, wait list No. 630 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV carire in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis in Palayamkottai branch from 1980. The Petitioner was orally informed that his services. were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was raken up by the Supreme Court. The Respondent/Bank, in: addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank. of India and All India State Bank of India Staff Pederation. and the settlement is with regard to absorption of Class IV temporary workmen who were depied employment after 1985-86 were classified in the settlement was under consideration code again and they classified the workmen.

under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of Palayamkottai branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 1980, the Petitioner has been working as a temporary massenger and sometime performing work in other branches also. While working on temporary basis in Palayanakottai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be inservice during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner urally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

As against this, the Respondent in its Counter. Statement alleged that reference made by the Government. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in semiority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was esponsed by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91, and 30-7-96. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3). of LD. Act. In terms, thereof, the Petitioner, was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 630 in wait list. of Zonal Office, Trichy. So far 212 wait listed temporary. candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is: false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave.

vacancies at and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retreachment provisions referred to above, cannot turn; around and claim appointment. Such of those temporary (imployees who were appointed were engaged.) for more subober of days and hence, they were appointed. Under the significant, employees were categorised as A, B and C. Considering their temporary service and subject to Other eligibility criteria, under category (A) the temporary employees jwho were sugaged for 240 days were to be considered and under category (B) the temporary employees) who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have opmpleted 30 days aggregate temporary service in any calcindar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for sensority in the wait list and it was also agreed that wait list was to taped in December, 1991 and the cut off date was extended up to 31-3-97 for folling up vacancies which were to arise upth 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemental the voluntary retirement scheme and even the permarkent vacancies stand substantially reduced. There werelno regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and wit in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212. temporary employees were appointed and since the Petitioner was wait listed at 630 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlemeats directly or indirectly and his claim is liable to be rejected. Forther, the said settlements were not questioned by any union so far and the settlements of hank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmeth) Act, 1981 does not apply to Respondent/ Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also dot correct to say that the Petitioner was discharging the work of permanent messenger. As per scrttlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual tabour. Further, for circle of Channai wait list of daily wages was not finalized. and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent. absorption. Hence, for all these reasons, the Respondent prays to dischise the claim with costs.

- 5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out. by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect. that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with ulterior motive. The Respondent/ Bank has been arbitrarily filling up the vacancies with the persons other flian wait listed workmen according to their whims and funcies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejainder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the hank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, retruitment of class IV staff in the Respondent/Bank is in accordance with the instructions land down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. to these circumstances, the points for my consideration are:
 - 6) "Whether the demand of the Petitioner in Wait List No. 630 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1 & 2 :-

8. When the matter was pending before this Tribunal at the time of evidence, it is reported that the Petitioner died and it is posted for taking steps. But, the LRs of the Petitioner have not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.

9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary measurgers in the establishment of State Bank of India and consequential appointment thereopen as temporary messenger is justified and for consequential appointment thereon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Petitioner have no personal right to claim coupleyment in the Respondent/Management, I find even in the event of reference being answered in favour of the deceased Petitlemer, this petition cannot be allowed. Therefore, I find the claim is abated and thus, it is dismissed but without any costs.

Thus the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by himcorrected and prenomined by the in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

माँ दिल्ली, 19 चुलाई, 2007

कर् अर. 2191,—औसोंग्क विकार ऑवस्थिम, 1947 (1947 का 14) की धारा 17 के अनुसरन में, केन्द्रीय सरकार, स्टेट मैंक ऑफ इण्डिया के प्रवंशतंत्र के संबद्ध नियोचकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण केर्द्ध के पंचाट (संदर्भ संख्या 2/2004) को प्रकाशित करती है, यो केन्द्रीय सरकार को 19-07-2007 को प्राप्त हुआ था।

> [र्स. एल-12012/293/98-आईआर(भी-I)] समय कुमार, देशक अधिकारी

New Deibi, the 19th July, 2007

S.O. 2191.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennal as shown in the Amexica in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/293/98-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXI ES

BEFORE THE CENTRAL GOVERNMENT PROSTRIAL TREE INAL-CUM-LABOUR COLET, CHENNAI

> Weshinday, the 31st January, 2007 PRESENT

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 1/2004

[Principal Labour Court CGID No. 3/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of

the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

METWEEN

Sci K. Genesan

: [Party/Petitioner

AND

The Assistant General Manager, State Bank of India, Zonal Office : [[Party/Management

Colmbatare.

APPEARANCES

For the Petitioner

: Sri V. S. Etamberan.

Authorised Representative

For the Management

: M/s. K. S. Sandar,

Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/293/98-IR (B-I) dated 01-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemai and the said Labour Court has taken the dispute on its file as CGID No. 3/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cambabour Court, the said dispute has been transferred to this Tribonal for adjudication and this Tribonal has numbered it as LD. No. 2/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Genesan, wait list No. 502 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petitioner in the Claim.
 Statement are briefly as follows:

The Petitioner was aponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Metapatayam branch: from 23-09-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondents Bank, in addition to its counter, filed a copy of astilement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were desied employment after 1985-86 were classified in the actilement. was under consideration once again and they classified

the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Melapayalam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard, But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed ofally to join at the branch where he initially worked as a class IV employee. From 23-09-1981, the Petitioner hijn been working as a temporary messenger and some times performing work in other branches also. While working od temporary basis in Melapalayam branch, another advirtisement by the Respondent/Bank was made. regarding chand workers who were reported to be in service during the same period. While the Petitioner was working as (uch, the Manager of the branch informed the Petitioner chally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Pethioner raised a dispute with regard. to his non-imployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, the has made a fresh representation to Gove, to reconsider the reference and the Petitioner requested the Respondent/Hank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular. service is unjust and illegal. Purther, the settlements are repregnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award, Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent Bank has also not observed the instructions. regarding ethat of increments, leave, medical benefits etc. to the temptionry werkened which amounts to violation of relevant provisions of circular. The Respondent/Bank cagaged the Petitioner and extracted the same work either. by payment of petty cash or by directing him to work under estimated name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based of strict senjority and without any rationale. Hence, for all these reasons the Petitioner prays to grant

relief of regular employment in Respondent/Bank with all amendant benefits

As against this, the Respondent in its Counter. Statement alleged that reference made by the Govi. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by Stare Bank of India Staff. Federation which resulted in five settlements dated 17-11-87, 16-07-88, U7-10-88, 9-1-91, and 30-7-96. The said: settlements became subject matter of conciliation proceedings and minutes were drawn engler Section 18(3). of UD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with Similarly placed other temporary employees and the Petitioner was wait leved as condudate No. 501 in wait list. of Zonal Office, Coimbatore, So far 211 wait listed. temporary candidates, our of 705 wait listed temporary employees were permanently appointed by Respondent/ Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged. for 240 days were to be considered and under category (B). the temperary employees who have completed 270 days. aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary. employees who have completed 30 days aggregate. temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered. for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The

Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 705 wait listed candidates, 211 temporary comployees were appointed and since the Petitioner was wait listed at 501 he was not appointed. The said actilements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said scallements were not questioned by any union so for and the settlements of bank level settlements and operated throughout the country. The Tamil Nada Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 34.12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of walt list, the Petitioner bas no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner consended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberare and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshriped in the Constiration of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances. wait listed persons like the Petitioner be engaged even in menial category, thus the Respondent/ Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category. the Respondent/Bank IV category, deliberately delayed in filling up the vacancies by the wait listed workmen with pherior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait fisted workmen according to facil whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recurrences rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 7872 of 1991, the Petitioner questioned the acticment dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner panys that an award may be passed in his favour.
 - In these circumstances, the points for my consideration are
 - (i) "Whether the demand of the Petitioner in Walt List No. 502 for restoring the walt list of temporary messangers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Petitioner is estitled?"

Point No. 1:

- 8. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and the Petitioner has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set expante.
- 9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1981 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 31-3-97 he was terminated form service without any untice or actice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is emitted to the bearfits of Section 25F of the 1.D. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner are not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected, and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Providing Officer

नई दिस्सी, 19 जलाई, 2007

कर का. 2192.—औद्योगक विकाद अधिनियम, 1947 (1947 का 14) जी धरा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिंग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगक विकाद में केन्द्रीय सरकार, औद्योगिक विकारण चेत्रई के पंचाद (संदर्भ संख्या 281/2004) को प्रकाशित काती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुन्य था।

> [स. एल-12012/628/98-आईआर (ची-1)] क्षमर कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O.; 2192.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government bereby publishes the Award (Ref. No. 281/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chemnal as shown in the America, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

(No.L-12012/628/98-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIMINAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007
PRESENT:

Shiri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 281/2004 [Principal Labour Court CGID No. 294/99]

(In the maner of the dispute for adjudication under clause(d) of sub-section (1) and aub-section 2(A) of Section 10 of the industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

RETWEEN

Sei P. S. Mbhanasandaram

: 1 Party/Petitioner

AN

The Assistant General Manager, : II Party/Management State Bank of India, Z. O. Chemiai.

APPEARANCE

For the Petitioner

: None

For the Management

: None

AWARD

 The Central Government Ministry of Labour, vide Order No. I,-12012/628/98-IR (B-I) dated 3-5-1999 has referred this dispute cartier to the Tamil Nadu Principal Labour Court, Chernal and the said Labour Court has taken the dispute on its file as CGID No. 294/99 and issued portices to both parties. The Schedule mentioned in that order is as follows:

"Whether the domand of the workman Shri P. S. Mohanasundaram, wait list No.36! for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

- 3. Though several notices were issued, no Claim Statement was filed on behalf of the Petitioner either before the Principal Labour Court or before this Tributal and there is no representation on his behalf. Hence, the Petitioner was called absent and set ex-parte. Further, no memo of objection was filed on the side of Respondent, in spite of adjourning the case for several hearings. Hence, the II Party/Management was also called absent and set ex-parte.
- 4. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 361 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is emitted?"

Point No. 1 and 2 :-

- 5. As I have already stated in spite of several notices, Petitioner has not appeared before this Court nor filed Claim Statement and the II Party/Management also has not filed any memo of objection. Therefore, both parties are called absent and set ex-parts. In view of the above, I find both parties are not interested in pursuing this dispute, Hence, I find the Petitioner is not entitled to any relief. No Costs.
 - 6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer नई दिल्ली, 19 जुलाई, 2007

का.आ. 2193.— औधोगिक विषय अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देश्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेन्द्र के पंचाट (संदर्भ संख्या 21/2004) को प्रकाशित भरती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ या।

[सं. एल-12012/274/98**-अईआ**र (बी-I)] अनय **कुमार, बेस्क अधिकारी**

New Delhi, the 19th July, 2007.

S.O. 2193.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2004) of the Central Government Industrial Tribunal-cum-

Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indus and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/27498-IR (B-I)] AJAY KUMAR, Desk Office:

ANNEXLERK

REFORE THE CENTRAL COVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007 PRESENT:

Shri K. IAYARAMAN, Presiding Officer Industrial Dispute No. 21/2094 [Principal Labbur Court CXID No. 69/99]

(In the matter of the dispute for adjudation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri P Chandran

: I Party/Petitioner

AND

The Assistant General Manager,

: II Party/Management

State Bank of India, Z. O. Coimbatore

APPEARANCE

For the Petitioner

; Sri V. S. Ekamberem,

Authorised Representative

For the Management

: M/s, K.S. Sundar,

Advocates

AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/274/98-IR (B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 69/99 and issued notices to both parties. Even though both sides centred appearance the I Party has not filed Claim Statement and he has not appeared before the Principal Labour Court. After the constitution of this CGIT Curn Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1.D. No. 21/2004 and issued notices to both parties. In spite of adjourning the case for several hearings, the Petitioner has not filed Claim Statement. Hence, the Petitioner was called absent and set ex-parte.

2. The Schedule mentioned in that order is as follows:

Whether the demand of the workman Shri P. Chandran, wait list No.294 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is

justified? If so, to what relief the said workfirm is emitted?"

On hehalf of the Respondent memo of objection/ Counter Statement was filed, wherein it is alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior metive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988, 07-10-1988, 9-1-1991 and 30-7-1996. The said senlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. in terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Politioner was wait listed as candidate No.294 in wait list of Zonal Offlice, Coimbatore. So far 211 wait listed temporary candidates, out of 705 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were sugaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, Band C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was

extended up to 31-3-1997 for filling up vacancies which were up arise up to 31-12-1994. The Perintoner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 715 wall listed conditions, 211 temporary employees were appointed and since the Petitioner was wast listed at 294 he was not appointed. The said settlements. were bone fide which were the only worksble solution and is bloding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the mid actilements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondant/Bank and this Tribunal has no jurildiction to entertain such plea. It is not currect to say that documents and identity of Petitioner was verified before the Petitionar was engaged. It is also not correct to say ther the Petitioner was discharging the work of permanient messenger. As per settlements, vacancies optis 31-12-94 were filled up against the waited list of bettiporary employees and vacancies for 1995-96 has to be filled up against the wait list draws for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and bence not published and there is only one wait list for the appointment of temporary employees. After the expany of wait hat, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with

- In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 294 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is calitled?" Point No.1:
- 5. When the matter was taken up for enquiry, it is reported by the special representative of the Petitioner that he has up instruction from the Petitioner and he is not appearing for the Petitioner and hence, the Petitioner was called abtent and set exparte. Since the Petitioner neither appeared before this Court nor filed the Claim Statement to substantiate his claim, I find the Petitioner is not interested in pursuing this dispute and hence, he is not entitled to any relief. No costs.
 - 6. Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by the in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 19 जुलाई, 2007

बा.आ. 2194.— औद्योगिक विवाद अधिनिवय, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑक इण्डिया के प्रबंधतंत्र के संबद्ध नियोक्कों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/त्रम न्यायालय, चेत्रई के पंचाट (संदर्भ संख्या 220/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्रान्त हुआ था।

[म्रं प्ल-120]2/346/98-आईआर (बी-7)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2194.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 220/2004) of the Central Government, industrial Tribunal-cum-Labour Court, Chennai as shown in the American in the Industrial Dispute between the automatical State Bank of India and the workmen, received by the Central Conveniment on 19-7-2007.

[No.L-12012/346/98-IR (B-I)] AJAY KUMAR, Desk Officer ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Widnesday, the 31st January, 2007 PRESENT:

K. JAYARAMAN, Presiding Officer

Industrial Dispute No. 228/2004 [Principal Labour Court CGID No. 58/99]

(In the matter of the dispute for adjudition under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sri K. Velu

: I Party/Petitioner

AND

The Assistant General Manager, State Bank of India.

: II Party/Management

Z.O. Chemai.

APPEARANCE:

For the Peritioner

: Sri V, S, Eksyntherem,

Authorised Representative

For the Management

 M/s. K.S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/346/98-fR(B-f) dated 3-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 58/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the

said dispute has been transferred to this tribunal for adjudication and this tribunal has sambered it as LD. No. 230/2004.

The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri K. Velu, wait list No. 745 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified,? If so, to what relief the said workman is entitled?"

3. The allogations of the Perhitmer in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and be was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Vandavasi branch from 01-01-1985. The Petitioner was coully informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees* Union in Writ Petition No.542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counser, filed a copy of settlement. under section 18(1) reached between management of State Bank of India and All India State Bank of India Souff Federation and the settlement is with regard to absorption. of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement. was under consideration once again and they classified the workmen under three categories namely A. Band C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Vandavasi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 01-01-1985, the Petitioner has been working as a temperary meaninger and some times performing work in other branches also. While working on temperary basis in Alatur branch, another advertisement by the Respondent/Bank was made. regarding casual workers who were reported to be in service. during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to him ponemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjustication. Though reference was sent to this Tribanal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Goyt, to reconsider the reference and the Petitioner requested the Respondent/

Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in tempotary services after the actilement. The Petitioner was not aware of actilement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the actionment mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action is not absorbing him in regular service is unjust and illegal. Further, the settlements are repognant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is: against the provisions of pera \$22(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been propared and the Respondent/ Bank has been regularising according to their whims and funcies. The Respondent/ Bank has also not observed the instructions regarding great of increments, leave, medical. benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and entracted the same work either by payment of petty cash or by directing. him to work under assumed name or by both which amounts. to unfair labour practice. The wait list suffers serious informities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

4. As against this, the Respondent in its Counter. Statement alleged that reference made by the Gove-foradjudication by this Tributed itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/ absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not born fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in sentority. Due to the business exigency, the Respondent/ Bank cagaged the temporary employees for performance: of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those comployees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated. 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section [8(3)] of LD. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temperary employees and the Petitioner was wait listed as candidate No. 739 in waitlist of

Zonal Office, Chennai, So far 357 wait listed temporary candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary Messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 catendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service m any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause $T_{
m c}$ the length of temporary service was to be considered for seniority in the wait list and it was also agree that wait list was in Japse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, our of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 739 he was not appointed. The said settlements were bena fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say than, the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary. employees and vacancies for 1995-96 has to be fitted up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of duily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary

employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- 5 In the additional claim statement, the Petitioner contended that he was baying been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, want listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with ofterior morive. The Respondent/Bunk has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and lancies. Hence, the Petitioner prays that an award may be passed in his (ayour,
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section [8(1)] of the Act and not under section [8(3)] of the Act. As per recruitment tules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions load down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No.7872 of 1991, the Petitioner questioned the settlement dated 27 10-88 and 9-1,-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are—.
 - 6) "Whether the domand of the Pentioner in Wait List No. 745 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Peritioner is entitled?"

 Phint No.1; ...
- When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and hence, the Petitioner was called absent and set expanse.

9. In this case, the Petitioner alleged that he was appointed by Respondent/Bank during 1985 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 31-3-97 he was terminated form service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the 1D. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, I find the allegations of the Petitioner were not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open count on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Offices

भई दिल्ली, 19 जुलाई, 2007

का,आ, 2195,—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण चेनई के मंचाट (संदर्भ संख्या 168/2004) को प्रकाशित करती है, जो अंन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [मं एल-12012/27/99-आई आर (बी-I)] अक्य कुभार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2195.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 168/2004) of the Central Government, Industrial Tribunal-com-Lubour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.L-12012/27/99-IR (B-f)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

PRESENT:

Shri K. JAYARAMAN, Presiding Officer
Industrial Dispute No. 148/2004
[Principal Labour Court CGID No. 255/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of

the industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

BETWEEN

Sci S. Rangaraju.

: 1Party/Petitioner

AND

The Assistant General Manager. State Bank of India, Region-I : II Party/Management

iane Bank di India, re; -------

Trichirapalli.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram,

Authorised Representative

For the Management

: M/s. K.S. Sundar.

Advocates

AWARD

- 1. The Central Government Ministry of Labour, vide Order No. L-120(2/27/99-TR (B-1) dated 10-05-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 255/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD-No. 168/2004.
- The Schedule mentioned in that order is as follows:—
 - "Whether the demand of the workman Shri S. Rangaraju, want list No. 419 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified,? If so, to what relief the said workman is entitled?"
- The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cache in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tirumayam branch from 06-08-1982. The Peritioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No.542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV remporary workmen who were thereemployment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three caregories namely A, B and C.

Though the Classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Timmayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 6-8-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tirumayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication, Though reference was sent to this Tribunal, the reference framed did not satisfy the greevance of the Petitioner, he has made a fresh representation to Govil to reconsider the reference and the Petitioner requested the Respondent/ Bank to continue to engage him in service as obtained prior to 31 3.07 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement, The Petitionel was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Politioner was not a party to the settlement mentioned by the Respondent/Bank before the contiliation of fiver. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repognant to Section 25G &25H of the LD. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait [48] has been prepared and the Respondent/ Bank has been; regularising according to their whims and fancies. The Respondent/ Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petry cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious informities and it is not based on strict semiority and without any rationale. Hence, for all these reasons the Petitioner prays to gram relief of regular employment in Respondent/ Bank with all attendant benefits,

 As against this, the Respondent in its Counter Statement alloged that reference made by the Govt, for adjustication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement 'of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Peritioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the basiness exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated \$7, 11-87, 16, 07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of LD. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wan listed as candidate No. 419 in waitlist of Zonal Office, Trithy, So far 212 wait listed temporary condidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary Messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retreachment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the sentement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agree that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent

vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the inviesand temporary employees were working to leave vacancies and not in regular permanent, cacancies, in ierms of aforesaid settlements, Out of 652 with listed candidates, 212 temporary employees. were appointed and since the Petitioner was wait listed at 419. We was not appointed. The said actilements were bone. fide which were the only workable solution and is binding. on the Petitioner. The Petitioner is escopped from Questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that, the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary. employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Purther, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has ou claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post to the subordinate carire of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right coshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under go circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated

all the settlements made by the bank with the State Bank of India Staff Pederation were under section 18(1) of the Act and not under section 18(3) of the Act. As per rectnitment rules of the Respondent/Bank, rectnitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank, Even in the Writ Petition before the High Court in W.P. No.7872 of 1991, the Petitioner questioned the settlement flated 27-10-88 and 9-1,-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

- 7. In these circumstances, the points for my consideration are.
 - (i) "Whether the demand of the Petitioner in Wait List No. 419 for restoring the wait list of temporary messengers in the 'Respondent' Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:-

- 8. When the matter was taken up for enquity, the Petitioner appeared and deposed his Chief Examination and when it was posted for cross examination of the Petitioner, he has not appeared for the same, even though the case was adjourned to so many bearings. It is reported by the representative for the Petitioner that he has no instruction from the Petitioner. Hence, the I Party/Petitioner was called absent and set exparte.
- 9. In this case, though the Petitioner alleged that he was appointed by Respondent/Bank during the year 1982 and he was terminated during the year 1986-87 and again he was engaged as a temporary messenger and all of a sudden, on 31-3-97 he was terminated from service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is entitled to the benefits of Section 25F of the LD. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, 1 find the allegations of the Petitioner was not established before this Tribunal. Hence, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - Thus, the reference is disposed of accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner

For the Respondent MW1 Sri C. Mariappan

MW2 Sri T. L. Schvaraj

	- 				
	ments Mar		W16	26-03-97	Xerox copy of the letter advising
Ex. N	e. Dare	Description			selection of partition Menial—G. Pandi.
WJ	01-08- \$ 8	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.	W17	31-03-97	Xerox copy of the specialiment order to S.i.G. Pandi
ws.	20-04 -8 8	Xerox copy of the administrative guidelines Issued by Respondent/Bank for implementation of Ex. M1	W18	Peb 2005	Merox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Maduras Circle
W 3	24-04- 9 1	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in	W19	13-03-95	Xerox copy of the Madural Module Circular letter show Engaging temporary employees from the pane) of wait list
W4	01-05-91	Messenger vacancies Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4	W30	(9-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sarction of messenger staff
W5	20 (08 9)	Xerox copy of the advertisement in The Hindu extending Period of qualifying	W21	09-07-92	$X_{\rm 2000}$ copy of the minutes of the Bipartite meeting
W6	15-03- 9 7	service to daily wagers Xerox copy of the circular letter of Zerral, Office. Chesnai About filling up of vaconcies of messenger posts	W22	09-07-412	Xarox energy of the settlement between Respondent/Bank and All India Staff Bank of India Staft Federation for implementation of norms—creation of part time general attendants
₩7	25-03 97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of mesorager vacancies and filling them before 31-3-3-97	With	U74U24U6	Xerox copy of the local Heat Office circular acout Conversion of part time employees and redesignate them as general attendants.
WS	Nīl .	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to domessengerial work	W24	31-12.85	Nerox copy of the local Head Office carcular, about Appointment of temperary employees in subordinate cadre.
W9	06-08-82	-	For the Respondent/Management :		
-1.5			Es No). Date	Description
WIO	NI '	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions	\mathbf{W}_{1}	17-11-87	Xerox copy of the settlement.
			W2	16/07-88	Xerex copy of the sentement,
			W 3	27-10-88	Xerox copy of the settlement.
			W4	09-00-91	Xerox copy of the settlement.
W12	Nil	Xerox copy of the Chapter XXX of Reference book on Staff matters regarding service conditions of part-time Employees & domestic servants	WS	XI-07-96	Xerox copy of the settlement.
			W6	09-06-95	Xerox copy of the minutes of conciliation proceedings
W 12	06-03-97	Xernx copy of the call letter from Madurai zonal office For interview of	W7	28405-91	Xerox copy of the order in W.P. No. 78709)
W13	06-03-97	messenger post—V. Muraiikannan	W8	15-05-98	Xerox copy of the order in OP, No. 2787/ 97 of High Court of Orissa
41 LJ	(APAP)	Xerox copy of the call letter from Madurai 20nal office For interview of messenger post—K. Subburaj	W9	10407-99	Xerox copy of the order of Supreme Court in SLP No. 3082/94
W14	06-03-97	Xerox copy of me call letter from Madurai zonal office For interview of messenger post—I. Volmurugan	W 10	MŁ	Xerox copy of the wait list of Trichy Midule
W]5	17-03-97	•	WII	25 К199	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99

नई विल्ली, 19 जुलाई, 2007

का,आ, 2196,— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की भारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट कैक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,_ अनुबंध में निर्दिष्ट औद्योगिक निवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेनाई के पंचाट (संदर्भ संख्या 10/2004) को प्रकारित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> (सं. एल-12012/322/98-स्पर्द आरं (बी-1)] अजब कुमार, डेस्क समिकारी

New Delhi, the 19th July, 2007

5.0. 2196.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Amexore in the Industrial Dispute between the Management of State Bank of India and their workman, received by the Central Government on 19-7-2007.

[No. L-12012/322/98-ER (B-7)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL COVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT: K. JAYARAMAN, Presiding Officer INDUSTRIAL DISPUTE No. 10/2004

[Principal Labour Court CGID No.11/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (!) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workmen).

METWOON

Sri P. Rayendran

1 Party/Petitioner

AND

The Assistant General

☐ Party/Management

Manager,

State Bank of India, Z.O. Combatore.

APPEARANCE:

For the Petitioner

Sri V. S. Ekambaram, Authorised Representative.

For the Management

M/s, K.S. Sundar, Advocates

AWARD

The Central Government, Ministry of Labour vide Orde No.L-12012/322/98-IR(B-I) dated 1-2-1999 has referred this dispute earlier to the Famil Nath Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No.11/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the

conscitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 10/204.

2. The Schedule mentioned in that order is as follows:—

"Whether the drmand of the workman Shri P. Rajendran, wait list No. 284 for restoring the wait list of temporary messengers in the establishment of State Benk of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioper in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at B. Komarapulayam branch from 10-5-1982. The Peritioner was crally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Sopreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration cuce again and they classified the workmen under three categories namely $\Lambda,$ B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the B. Kumarapalnyam branch. He was called for an interview . by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he mitially worked as a class IV employee. From 10-5-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temperary basis in B.Kumarapalayam branch, another advertiseroeut by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and be need not attend the office from 1-4-97. Hence, the petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to

reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due copiese. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, at engaged the Petitioner only in temporary services after the settlement. The Pelitioner was not aware of settlement by which his services and number of days worked by himafter interview do not merit consideration. The $P_{\pi/0}$ coner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in our absorbing him in regular service is unjust and illegal. Further, the sentements are repugnam to Section 25G and 25H of the LO. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement. speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whirns and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. so the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of perty cash or by directing him to work index assumed name or by both which, amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits

 As against this, the Respondent in its County. Statement alleged that reference made by the Government for adjustication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/alisurption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retreachment and implemented by Respondent/Bank The claim of the Peritioner is not bona fide and made with ulterior imptive. The Petitioner concealed the imaterial facts that he was wait listed as per his length of engagement and could not be absorbed us he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employed for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those ediployees who are claiming pensianent absorption and when their case was expossed by Stare Bank of India Starf Federation which resulted in five settlements dated 17-11-87,16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said scalements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3). of LD. Act. In terms thereof, the Petitioner, was considered. for permanent appointment as per his eligibitity along with similarly placed other temporary employees and the

Perimeter was warth sted as candidate No. 284 in wait list of Zona, Office, Coimbators, so far 211 west listed remourary. condidates, but of 705 wait Ested temporary employees. were permanently appointed by Respondent/Bank It is failed to allege that the Petitioner worked as a temporary messenger. The Persuence was engaged only in leave Vacaticies as 202 when it armse. When the Patitioner having submitted to selection propers in terms of settlements drawn as per remembracet provisions referred to above. can but turn ground and during appointment. Such of those ter (porary employees who were appointed were engaged for more number of days and hence, they were appointed. under the settlement, employees were categorised as A. R. and C. Considering their temporary service and subject to other, eligibility criteria, under category (A) the temporary employees who were angaged for 740 days were to be considered and under category (B) the temporary employees who have confpieted 270 days aggregate temputary service many conunuous block of 36 calendar menths and under category (C) the temperary employees. wiso bave completed 30 days aggregate temporary service. augy száznást yezt after 3-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 35. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered (or seniority in the waither and it was also agreed that wait [8] was to lapse in December, 1991 and the digit off date was extended up to 31-3-97 for fitting up vacancies which were to arise upto 31 1,194. The Petitioner has no valid and onforceable right for appointment. The Respondent and implemented the voluntary retirement scheme and overthe permanent vacancies stand substantially even reduced. Incre were no regular vacaneaes available. The pacturar problem was due to the thicls that all the afore such temporary employees were working in leave viscancies and including regular permanent vaccatales. In terms of aforesaid settlements, out of 705 wait disted candidases, 201 telegonary employees were appointed and since the Petitioner was with listed at 384 he was not appointed. The said satilenteds were bodd fine which were the only winkable so ubun and is binding on the Peattoner, it he Peattoner is estopped from questioning the settlements directly or maireatly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the skill-ements of bank ray at settlements and operated throughout the country. The Tamil Nado Industrial Establishment (Conformers of Permanent Status to Workmen) Acr. 1981 coes not apply to Respondent/Bank. and this Tribunal has been associated emortain such pleu. It is not correct to say that documents and identity of Perfriener was verified before the Petitopier was espaged. It is also not correct to say that the Peritinger was discharging the work of permunant messenger. As persettlements, vacancies upto 31.12 94 were filled up against the waited list of temperary astiployees and vacanates for 1995-96 has to be fitted up against the wait list draws for appuintment of daily wages/casual labour. Further, for circle of Chemical wait list of daily scages was not finalized and kence not published and there is only one wan list for the

appointment of temporary employees. After the exp wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim, with costs.

In the additional claim statement, the Petitioner contended that he was having been sponsored by coupleyment exchange and having undergone medical examination, the peritioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for , persintracult in the post of messenger and other class IV post. He was engaged in the messenger post in the suburdinate cadre of the Respondent/Bank unanimously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the versions of the Petitioner as he has acquired the valuable light enshrined in the Constitution of India. In the year 99k, the Respondent/Bank has assued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/ Bank imposed total ban for his future employment. Even though there were sufficient number of raducties in class IV category, the Respondent/Bank teliberately delayed in filling up the vacancies by the wait reger payetimen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons ther than went listed workmen according to their whims and function. Hence, the Petitioner prays that an award may ite passed in his favour.

6. Again, the Petitioner filed a rejoinder in the counter Statement of the Respondent, wherein it is stated all the sentements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and continued Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the sentlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner grays that an award may be passed in his favour.

- 7. In these direumstances, the points for my consideration are:—
 - (i) "Whether the demand of the Petitioner in Wait List No. 284 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?
 - (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

3. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that he is not appearing for the Petitioner and the Petitioner has not appeared before this Court for further proceedings and hence, the Petitioner was called absent and set exparte.

- 9. In this case, the Peutoner alteged that he was appointed by Respondent/Bank during 1982 and he was terminated during the year 1986-87 and again worked as a temporary messenger and all of a sudden, on 51-5-97 he was terminated form service without any notice or notice of compensation. Since he has continuously worked for more than 240 days in a continuous period of 12 calendar months, he is emitted to the benefits of Section 251 of the LD. Act. But, no evidence was adduced on behalf of the Petitioner nor produced any document to establish his contention. The Petitioner has not appeared before this Tribunal to substantiate his claim. As such, 1 find the ullegations of the Petitioner were not established to the Tribunal. Hence, I find the Petitioner is not entitled in any relief as claimed by him. No Costs.
- 10. Thus, the reference is disposed of accordingly: (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN. Presiding Oifficet वर्ड विल्ली, 19 जुलाई, 2007

क्य.आ. 2197,—औह्योगिक विवाद अधिनियम. 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रमंत्रतंत्र के संबद्ध नियोबकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्हरं के पंचाट (संदर्भ संख्या 183/2004) को प्रकाशित करती है, औ केन्द्रीय सरकार को 19-7-2007 को प्राण हुआ था।

> [सं. एल: 12012/564/98-अपर्द आरं (बी-1)] अजय कमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2197.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.183/2004) of the Central Government Industrial Tribunal-cum-Labour Court. Chennai as shown in the Amexure in the Industrial Dispute between the Management of State Bank of India and their workman, received by the Central Government on 19-7 2007.

[No.1-12012/564/98-IR(B-I)] ALAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CHIM LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT : K. JAYARAMAN, Presiding Officer tindustrial Despute No. 183/2004

[Principal] abour Court CGID No.222/99]

(In the matter of the dispute for adjudication under clause (d) of sub-section (I) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workman).

BETWEEN

Sri P. Rajentiran (deceased) : I Party/Petitioner

AN

The Assistant General

II Party/Management

Manager,

State Bank of India, Region-1, Trichy.

APPEARANCE:

For the Petitioner.

 Sri V.S. Ekambaram, Authorised Representative.

For the Madagement

M/s. K. S. Sundar, Arlyneates

AWARD

The Central Government, Ministry of Labour vide Order No.1-12012/564/98-IR(B-1) dated 26-4-1999 has referred this dispute earlier to the Tamil Nadu Principal 1-abour Court. Chennal and the said Labour Court has taken the dispute on its file as CGID No. 282/99 and issued notices to both parties. But the petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the constitution of this CGIT-cum-Labour Court the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as ID No. 183/2004 and notices were issued to both parties and both parties entered appearance and filed their Claim Statement and Counter Statement respectively.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri P.S. Rajendrao, wait list No. for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3 The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenget after an interview and medical examination. He was appointed on temporary basis. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Perition filed by State Bank Employees' Union in Writ Petition No. \$42/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached. between management of State Bank of India and All India. State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely

A. B and C. Though the classification was unreasonable. the Respondent/Bank brought at the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed formal through Branch Manager of the branch. He was called for an interview by a Committee appointed. by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment But, the Petitioner was informed orally to join at the branch where he mittally worked as a class IV. couployee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on remporary basis, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service. during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his nonemployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication.

 As against this, the Respondent in its Counter Statement olleged that reference made by the Govt, for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, he quesiton of regular appointment/absorption does not arise. The engagement of Petitioner was not puthorised. The Pridioner is emopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in Irru of provisions of law, retrenchment and implemented by Respondent/Bank, The claim of the Petitioner is not bona fide and made with alterior motive. The Petitioner concealed the material (acts that he was wait fixled as per his length of engagement and could not be absorbed as he was positioned down in semority. Due to the business exigency, the Respondent Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Hank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said: settlements became subject-matter of conciliation proceedings and minutes were drawn under section 18(3). of I.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wan listed as condidate. No. 638 in waidist. of Zonal Office, Trichy, So far 212 wait listed temporary. candidates, out of 652 waithsted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to

selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause I. the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Politioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary etaployees were appointed and since the Petitioner was want fisted at 638 he was not appointed. The said settlements were bunafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the scattements of bank level scattements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to emertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Peritioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chemai wait list of daily wages was not finalized and beace not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- 5. In the additional claim statement, the Petitioner contended that he was baving been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfuled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Politicher prays that an award may be passed in his favour-
 - 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
 - In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. for restoring the wait hist of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"
 - (ii) "To what relief the Petitioner is entitled?"

Point Nos. 1 & 2:-

8. When the matter was pending before this Tribural at the time of evidence, it is reported that the Petitioner died and it is posted for taking steps. But, the LRs of the Petitioner have not taken any steps to implead them as LRs in this dispute from 6-12-2004. They have also not filed any memo stating when the Petitioner died or what steps they have taken to implead them in this dispute.

9. The reference made in this dispute is "Whether the demand of the workman for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified and for emisequential appointment threon as temporary messenger. It is only a personal right claimed by the Petitioner and since it cannot be said that the LRs of the Peritioner have no personal right to claim employment in the Respondent/Management, I find even in the event of reference being answered in favour of the deceased Petitioner, this petition cannot be allowed. Therefore, I find the claim is abated and thus, it is dismossed but without any costs.

Thus the reference is disposed of accordingly.

(Dictated in the P.A., transcribed and typed by him corrected and pronounced by me in the open court on this day the 31M languary, 3007).

K. JAYARAMAN, Presiding Officer

नई दिल्ली: 19 जुलाई, 2007

का,आ. 2198,—और्स्सींगक विवस अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट वैंक ऑफ इंडिया के प्रवर्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देख औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्सई के पंचाट (संदर्भ संख्या 121/2004) को प्रकाशित करती हैं, बो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

> [२६ एल-12012/249/98-आई आर (ची-1)] अवय कुमार, डेस्क अधिकारी

New Delfu, the 19th July, 2007.

S.O. 2198.— In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Enveronment (icreby publishes the Award (Ref. No. 121/20(4)) of the Central Gove. Industrial Fribunal - cum-Labour. Chennals as shown in the Annexure in the Industrial Dispute between the Management of State Bank of Indua and their workman, received by the Central Government on 1947-2007.

[No.1-12012/249/98-IR (B-T)] AJAY **KUM**AR, Desk Officer

ANNEXURE:

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007

PRESENT: K. JAYARAMAN, Presiding Officer INDUSTRIAL DISPUTE No. 121/2004

(Principal Labour Court CGID No. 14)/99j

(ii) the matter of the dispute for adjudication under clause (ii) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workinen).

BETWEEN

S. A/puthasamy (deceased) : 1 Party/Petitioner

AND

The Assistant General

If Party/Management

Manager.

State Bank of India. Region 1, Trichy.

AFFEARANCE:

For the Petitioner

. Still V.S. Dkambaram.

Authorised Representative.

For the Management

: M/s M.S. SundarAnandan,

Advincates

AWARD

The Central Government, Manistry of Labour vide Order No.L-12017/249/98 Bc(B-1) dated 08 02-1999 had referred this dispute earlier to the Tamil Nadu Principal Labour Court. Chemoi and the said Labour Court has taken the dispute on its file as CCII) No. HI/99 and issued notices to both parties. But, the Petitioner has not filed the Claim Statement before the Tamil Nadu Principal Labour Court. After the emistration of this CGIT-Cum-Labour Court, the said dispute has been transfelfed to this Tribunal for adjudication and this Tribunal has numbered it as LI) No. 121/2004 and notices were issued to both parties and both parties entered appearance and filed their Court Statement and Counter Statement respectively.

2. The Soliedule mornioned in that order is as follows:-

"Whether the demand of the workman Shri S. Arputhasamy, wait list No. 367 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified. If so, in what relief the said workman is entitled."

- 3. When the matter was taken up for hearing, it is reported by the representative of the Petitioner that the Petitioner died on 20-11-94 and hied a petition to implead legal beins of the decease. Pentioner, Since I have given a finding in the LR perition viae LA, order No. 211/2005 dated. 2nd November, 2005, that LRs application is not maintainable and since no orders were obtained from higher forum, I find the claim is abatic, and the Petition is dismissed without any energy.
 - 4. Thus the reference is a sposed of accordingly.

(Dictated to-the 7.4% cranations, succepted by first operated and pronounced by the in the tipen court on this day the 21st January, 2007).

K. JAYARAMAN, Presiding Officer

नई बिल्ली, 19 **जुलाई**, 2067

वज्र.आ. 2199.—औद्योगिक विवास अधिनियम, 1947 (1947) ज्ञ (4) की घारा 1? की अनुसरण में, केन्द्रीय मरकार, स्टेट बैंक ऑफ इण्डिया को प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों को बरेच, अनुबंध में निर्दिश्ट औद्योगिक क्लियर में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 235/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को .9~7~2007 को प्राप्त हुआ था।

| सं. एल ।2012/465/98-आईआए(बी-३)] अवय कुमर, डैरक अधिकारी

New Dethi, the 19th July 2007

5.(). 2199.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 235/2004) of the Central Government, Industrial Tribunal-con-Labour Court, Chennai as shown in the Amexage in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/465/98-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

REFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 235/2004 (Principal Labour Court CGID No. 162/99)

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen)

BETWEEN

Sti. K. Ramachandran

;] Pany/Petitioner

AND

The Assistant General Manager,: If Party/Management State Bank of India.

Z. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V.S.Ekambaram. Authorised Representative

For the Management

: M/s, K.S. Sundar,

Advocates

AWARD

1 The Ceptral Government Ministry of Labour, vide Order No. L-12012/465/98-IR (B-i) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemiai and the said Labour Court has taken the dispute on its file as COID No. 163/99 and issued notices

to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1. D. No. 235/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Ramachandran, wait list No. 603 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

 The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV carire in State Bank of India and be was given appointment as messenger after an interview und medical examination. He was appointed on temporary basis at Janapanchatiram branch from 24-10-83. The Petitioner was orally informed that his services were no more required. The pon-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Rank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the scalement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Janapunchatiram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worker as a class IV employee. From 24-10-83, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Janapanchatiram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner urally on 31-3-1997 that his services are not required any more and he need not attend the office from 1-4-1997. Hence, the Petitioner raised a dispute with regard

to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to segularisa him in service in due course. The Respondence Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank. it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after bueryiew do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Responders/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the J.D. Act. The terminotion of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has heen prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Responded/Bank has also not observed the instructions regarding grain of increments, leave, medical benefits atc. to the reciporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed dame or by both which amounts to unfair labour practice. The waithst suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Positioner prays to grant relief of regular entployment in Respondent/Bank with all attendant benefits.

 As against this, the Respondent in its Counter Statementalleged that reference made by the Government for adjustication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement, The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Peritioner concealed the material facts that he was waitlisted as per his length of engagement and could not be absorbed as he was positioned down to seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated. 17:11-1987, 16:7-1988, 7-10-1988, 9-1-1991 and 30:7-1996. The said settlements became subject matter of conciliation. proceedings and minutes were drawn under Section 18(3). of I.D. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with Similarly placed other temporary employees and the Potitioner was want listed as candidate No. 603 in wait list of Zonal Office, Channai. So far 357 wait fisted temporary. candidates, out of 744 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to attege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as perrefrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject. 10 Other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category(B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar. months and under category(C) the temporary employees. who have completed 30 days aggregate temporary servace. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the waitlist and it was also agreed that wait list was to lapse in December, 1991 and the out off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Peritioner has no valid. and enforceable right for approximent. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facils that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 744 wait lived candidates, 357 temporary employees were appainted and since the Petitioner was wait listed at 603 he was not appointed. The said settlements. were bona fide which were the only workable solution and is binding on the Peritioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said sortlements were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tannil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct in say that documents and identity of Petitioner was verified.

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, variancies upon 31:12-94 were filled up against the waited list of temporary employees and variancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with cests.

- In the additional claim statement, the Petitroper contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set our by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Brock continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed arejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recreitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is take to allege that the sculements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 603 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment

thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate carire on temporary basis. After engaging them intermittently for some years. the Petitioner in this case and other Petitloners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civit) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final bearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispate in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant henefits.
 - On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the J.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retreached messangers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Apt providing for retreachment is not enacted only for the beachi of the workmen to whom Section 25F applies but for all lauses of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one extegory of retrenched workman. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untonable. It is further contended that on behalf of the Petitioner that E_X , W2, W3. and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the seulements on absorption and which are statutory in character. Further, a combined study of Ex.MI and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of ${\bf E}_{\rm X}, {\bf M}_{\rm T}$ deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A. B & C' is quite apposed to the ductring of flast come—first go' or first come— last go' and therefore, the categorization in Clause | is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and altowed to work in leave/cusual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to formessengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters. copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circulostances, the absorption of casuats along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of activing at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructional in Ex.W2 four types of wairing lists have to be prepared. Hut the Respondent/Bank has alleged to have **prepared only** one wait list for each module as per $E_{X}M(10)$ in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW Us unable to say as to when the wait first Ex.M10. was preparted, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated $17-11-87,\ 27-10-98$ and 9-1-91, which are marked as Ex.Ml. M3 and M4 respectively. But, when MWI has spoken about the

softlyments, he depoised that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ev.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble Bigh Court has held in its order duted 23-7-99. in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that it is clear that the 1987 settlement was expressed with the temporary class IV employees who Were paid scale wages as per Bipanite Settlement while the 1988 settlement dealt with ontly wager in Class IV category. who were paid wages 44, you mutual agreement basis. In such circumstances, is rightly contended the Respondent are not justified and combined the list of earlyidates covered. prider 1987 serbentent and 1988 sertlentent smale they formed two distanct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article (4 of Constitution of India 1 Further, the averment of MWI and the statements in Counter Statement are contrary to the above and it is nothing but a desperate arrempt to wriggle our the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals it is further contended on behalf of the Peritioner that as per deposition of MW1 want list under Ex.M10 companies of both messengerial and nonmassengerit candidates. While the temporary employees. were appointed after due process of selection and were paid wages on the individual and astry wise settlement, it is nut so in the case of cardab. Therefore, both bolongs to two different and obvince categories. But, Ex. M3 provides for the same counts to the capitals as in the case of temporary employees at me matter or absorption. Therefore, it is violative of Article [4 & 16 of Constitution of India. Theretore, the Perujoner coatended that preparation of Ex.M 1 namely wall but is not inconformity with the instructions of Ex M2 and non-preparation of separate panels assume to violation of circular, secondly, it has not been prepared as per instructions in Ex. W2. circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No. 1 1932/91. in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1.8.88; Furthermore, walt list under Ex. M10 does not carry particulars about the canthdates date of initial appointment and the number of days put in by them in arrive, at their respective sensority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the crepibility attached in the wint rist. Above \$6). Bx MI was not produced at the time of conciliation proceedings bold during the year 1997-99 bold at Cheonal and Modural and only during the year 2003 the Respondent/Bank produced the wair list Ex. M10 before this Tribunal marking it as a confidential decument. It is further contended on behalf of the Petitioner that though

the Respondent/Bank has alleged that these petition set were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacuacy. Purther, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as "budlies" casuals or comporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Rx. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M 10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ future vacancy anywhere in module or circle and in case, a condidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mysicry as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW I. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, male fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of sextement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9 6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) scrilement as claimed by the Respondent/Bank which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced En. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to pave any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/Management has examined two witnesses, the

deposition of management autoesses during the cross examination had become apparent that they have no personal knowledge about the settlements which we marked as Ex. M I to M5. Above all, though the Respondent Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence avidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months. as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service in illegal and against the mandatory provisions of Section 😂 and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays às days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 Ω LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer' cannot mean that those days only when the workmen worked with harmner, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of west lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar mouths and they are in ago group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. la such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and

their engagement was not authorised. Purther, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bousfide and are made with offerior motive. Purther, they have concealed the material (acts that the Petitioner was wait listed as per ength of his engagement and could not be absorbed as he was positiohed down in the sensority. The Respondent/ Bank was edgaging temporary employees due to business. exagency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked ak temporary messenger is viso incorract, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were henofile which were the only workable solution and is binding on the Peritioner. The Petitioner accepted the settlement said accordingly he was wait listed and therefore, the Petitional is estropped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate (proughout the country. Further, he relied on the rolings reported in 1991 I LLI 323 ASSOCIATED GLASS INDÚSTRILS LITO, VA INDUSTRIAL TRIBUNAU A.P. AND COMERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen reised a pleu before the Tribunal that they did not resign valuntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud. misrepresentation or energians, the settlement is binding on the warmhen." Learned counsel for the Respondent forther reflection the rulings reported in 1997 $\Pi 11.01180$ ASHOK AMD OTHERS VA MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Beoch of the Bombay High Court has held that "therefore a kentlement arrived at in the course of the conciliation proceedings with a recognised majority union wil: be brodisten all workmen of the establishment, even those who believe to the minority union which had objected to the same. To that extent, it departs from the ordinary law of chatracts, the object abviously is to uphold the sanctity. of sentemental reached with the active assistance of the concitiation officer and to discourage an individual employee or a minority union from southing the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even conseption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is intitled to due weight and consideration." Learned counsel for the Respondent further relied on the rutings reported in 1997 ! LLJ 308 K.C.P. LTD. $V_{\rm S}$ PRESIDING OFFICER AND OTHERS wherein the Supreme

Court has betd that fisettlements are divided into two categories namely (i) those arrived an outside the conciliation. proceedings under Section 18(1) of the I.D. Act and (n)those arrived at in the course of conciliation proceedings. under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the telllement was reached with a representative union of which the contesting workshes were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the consesting workmen also." He further relied on the rulings reported in ATR 2000 SC 466 NATIONAL ENGINEERING INDUSTRIES L'ID. VA STATE OF RATASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the tree will of the parties and is a pointer to there being good will harween them. When these is a dispute that the settlement is not hourafide in nature or that at has been arrived at on account of fraud. misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govemay refer for adjudication after examining the aflegations as there is an underlying assumption that the autilement reached with the help of the conciliarion officer must be fair and reasonable "Relying on all most desistions, learned counsel for the Respondent controlled that though it is allaged that they are not parties to the settlement, since the federation in which the Paritioner is also use among them. they have entered into settlement with the bank and therefore, it is binding on the Perationer. Fraither, he argined that no union of the bank has questioned the sectionient and in such circumstances, it cannot be said that it is use. briding on them and be is estopped from disputing the same.

11. Learned counsel for the Respondent Turther contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wair list No. given for restoring the wair first of Temporary messengers in the establishment of Respondent/Hank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full hack wages are Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as affeged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that more wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY.

KOLLAM BILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Ketala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find our some rechnical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact mature of pleading of the Petitioner in find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Peritioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORJENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Count has held that "the Tribunal cannot go behind the terms of reference. but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN V_{S_1} PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also such the order of reference should not be construed in the manner which would protong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reterence in a fair and reasonable minuter, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look linto the pleadings of the Pelitioners. and can decide whether the Petitioner is entitled to be reinstated in service as atleged by him and whether he is entided to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribural is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it

is not questioned by any of the unions of the Respondent/ Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner inentioned that be has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Government service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of **botto**m persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such direumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel. was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the passel was prepared and the fact that it was a yearty panel expiring on 6-2-98, we are of the opinion. that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidate, included in ment list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, teamed counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with malefide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a variancy. The direction in effect means that every ad-hoc/ temporary frontloyee who has been continued for one year. should be pregularised even though: (a) on vacancy is available for him which means creation of a vacancy; (b) he was not spensored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of sight blanker orders. None of the decisions relied upon by the High Court justify such wholesale. unconditional orders. Moreover, from the mere continuation of an ad-han employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of humb in such matters. Conditions and direumstances of one unit may not be the same as of the other. Just because in one case a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must fellow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and giretimstances of that case. It cannot be a mechanical not but a judicious one. From this, the impugned directions paust be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Counts. He further relied on the decision reported. in 1997 IISCC I ASHWANI KUMAR AND OTHERS V2. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees!whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularitation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc busis against an available vacancy which is already sauctioned. But, if the initial entry isself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise to fatility. It would amount to decorating a still born baby. Under these curcumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entirled to claim any absorption in the Respondent/Bank. Further, he relied on the rutings reported in AIR 1997 SCC 3657 HIMANSHI. KUMAR VIDYARTHI & ORS VESTATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these direumstances, their disengagement from service. cannot be construed to be a remembracent under the LD. Act. The concept of retresciment therefore, cannot be stretched to such an extent as to power these employees. Since they are only daily wage coupleyees and have no right to the posts, their disengagement is not arbitrary." He further relied on the ralings reported in 1994-3 LL! (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retranchment procedure following principle of his (come-first gold is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle. retreaching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his junious were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot. be given to the Perisioner and, therefore, the claim is to be dismissed with costs.

 Learned Senior Advocate turther argued that given in recent decision reported in 2006.4 SCC 1 Secretary, State of Kamataka Vs. Uma Dovi, the Supreme Court has hold that merely because a temporary employee or a casual wage. worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules, it is not open to the Court to prevent regular recruitment at the instance of temporary employees. whose period of employment has come to an end or of adhas employees who by the very nature of their appointment, do not apquire any right." Funher, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not awase of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he magnt have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or

casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "tunless the appointment is in terms of the relevant. rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued. for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following: the rules, the same being a nulliry, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SUREVIDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16. of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION V_4 S.C. PANDEY wherein the Supreme Court has held that "only in because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon. him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Peritioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner

- 17. I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim. Statement, the Petitioners have made so many allegations: with regard to preparation of wait list and also settlements. entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the septement our the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account. of mala fide, misrepresentation, fraud or even corruption or . other inducements. Under such circumstances, I find the Politioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.
- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunat had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are cutilled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not emitted to claim regularisation or reinstanement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing fludings that the Petitioner is a temporary employed and be is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work. I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K, JAYARAMAN, Presiding Officer

						
Witnesses Examined:			W17	17-3-97	Xerox copy of the Service particulars.	
For the Petitioner WW1 Sri K. Ramachamiran					J. Velmunigan	
For th	WW2 S6 V, S. Ekambaram For the Respondent MW1 Sri C. Mariappan MW2 Sri C, Ramatingam			26-3 9 7	Xerox copy of the letter advising selection of part time Menial G. Pandi	
	Documents Marked : Lia. No. Date Description			31-3-97	Xer(a, copy of the appnintment order to St. C. Pandi	
W ₁	1-2-88 20 4 88	Xerox copy of the paper publication and saily Thanthi based on Ex. M1. Xerox copy of the administrative	W20	Feb. 2003	Xerox copy of the pay stip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle	
w3	<u>344-9</u> 1	guidelines issued by Respondent/Hank for implementation of Ex. M1.	WZS	13-2-95	Xerox copy of the Madural Module Ciscular letter about engaging temporary	
		Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W22	9-11-92	comployees from the panel of wait list. Xerox copy of the Head Office Circular. No. 28 regarding norms for sanction of messenger staff.	
W4 W3	1주의 20-08-91	Xerox copy of the adventisement in The Hindu on daily wages based on Ex. W4. Xerox copy of the advertisement in The	W23	9-7-92	Xerox copy of the minutes of the hiparrie meeting.	
	:	Hindu extending period of qualifying service to daily wagers.	W24	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff	
W6	15-3-97	Xerox copy of the circular letter of Zonal Office. Chemnal shout filling up of vacancies of messenger posts.			Bank of India Staff Federation for implementation of norms creation of part time general attendants.	
W7	25,597	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancles and filling them before 31-3-97.	W25	7-2-06	Xerox copy of the Local Head Office Carcular circular about conversion of part time employees and redesignate them as general attendants.	
W8	Na .!	Xerox copy of the instructions in Reference book on staff about casuals not to be engaged at office/branches to	₩26	31 12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.	
	:	rio messengerial work.	Far Ø	For the Respondent/Management :		
W9	30 5-96	Xerox copy of the service certificate issued by Janapachatram Branch.	Ex. N	o. Date	Description 🗂	
$\mathbf{W}10$	9-\$-98	Xerox copy of the service certificate	Ml	17:11.87	Xerox copy of the settlement.	
51111	35 41 0e	issued by Janapachatrare branch.	M2		Xerrix cupy of the semientent.	
WII	25 ₁ 11-85	Xerox copy of the service certificate issued by Janapachatram branch.	М3	27-10-88	Xerox copy of the settlement.	
W12	Ni	Xerox copy of the administrative	M4	09-01-91	Xerox copy of the settlement.	
		guidelines in reference book on staff	MS	30-07-96	Xerox copy of the settlement.	
		matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.	M6	09406-95	Xerox copy of the minutes of conciliation proceedings.	
W13	Sij	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto	М7	28-05-91	Xerox copy of the order in W.P. No 7872/91.	
W]4	5-3-97	31 12-95. Xerox copy of the cuil letter from Madurui Zorost addisor for interview of massages.	MB	15-(25-98	O.P. No. 2787/97 of High Court of Orissa.	
W15	- 6-3-97	zonal office for interview of messenger post—V. Muralikannan Xerox copy of the call letter from	M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.	
		Maduisi zonal office for interview of onessenger post- K. Subburaj	MIN	ИЛ	Xerox copy of the wait list of Chennai Module.	
W16	5-3-97	Xerox enpy of the call letter from Madural zonal office for interview of messenger post —J. Velmurugan	Mil	25-10-99	Kernx copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.	

नई दिस्सी, 19 जुलाई, 2007

का.आ. 2200.—औखोंगक विचाद अधिनयम, 1947 (1947 का 14) की धरा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसंध में निर्दिष्ट औद्योगिक विकाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/अम न्यायास्त्रय, चेप्रई के पंचाट (संदर्भ संख्या 244/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 की प्राप्त हुआ था।

> [सं एल-12012/461/1998-आक्रिस(बी-I)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2200.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 244/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chemnai as shown in the Armexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.1-12012461/1998-IR (B-I)] AJAY KUMAR, Desk Officer

ANNIOR BEE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 244/2004 (Principal Labour Court CGID No. 171/99)

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

BETWEEN

Sri. R. Jayavelu

: IParty/Petitioner

AND

The Assistant General Manager, : Il Party/Management State Bank of India, Z. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekambaram, Authorised Representative

For the Management

: M/s. K. Veeramani Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/461/98-IR (B-I) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemnai and the said Labour Court has taken the dispute on its file at COID No. 171/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 244/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. R. Jayavehi wait list No. 452 for restaxing the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Thiruvallut Main stranch from 17-5-1984. The Petitioner was orally informed that his services were no more required. The non-earployment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Thirtivallus branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where be initially worked as a class IV employee. From 17-5-1984, the Petitioner has been working as a temporary messenger and sometime performing work in other branches also. While working on temporary basis in Ambatter state brench, another advertisement by the Respondent/Bank was made. regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on: 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1999. Hence, the Petitioner raised a dispute with regard to his obn-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to angage him in service as obtained prior to 31-3-1997 and to regularise him in service in due pourse. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Peritioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 250 & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single walt list hus been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits erc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Benk engaged the Petitioner and extracted the same with country by payment of petty cash or by directing him to work under assumed hame or by both which amounts to unfair lebour practice. The wait list suffers serious infirmities and ${
m II}$ is opt based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendani benefits.

4. As against this, the Respondent in its Counter Statement silleged that reference made by the Gevi. for adjudication by this Tribunal issett is not maintain $\delta \kappa$. The Petitioned was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in fieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior miquive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those

employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-1987, 16-07-1988,07-10-1988,9-1-1991 and 30-7-1996. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3) of 4.D. Act, in terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petit, oncr was wast listed as candidate No.720 in wait list of Zonal Office, Chennai, So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is folse to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacuraties as and when it arose. When the Petitioner baving submitted to selection process in terms of sertlements drawn as per retrenchment provisions referred to above. cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the seitlement, employees were categorised as A. B and C. Considering their temporary service and subject to other elagibility criteria, under category (A) the temporary employees who were engaged for 240 d_3y_3 were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary (eavist) in any continuous block of 36 calendar months and order category (C) the temporary employees who have comparted 30 days againgate temporary service in any cafendar (Ser afro) 1-7-75 or mammum 70 days cemperacy service in any continuous block of 36 مورة مورة calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for scolidrity in the wait list and a was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up varancies which were to arise upto 31 (2-1994). The Petitsoner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent variancies stand substantially reduced. There were no regular vacancies available. The poculiar problem was due to the facts that all the aforesard temporary. employees were working in trave vacancies and not in regular permanent vacancles. In terms of aforesaid settlements, but of 744 wait 3 wed capitifates, 357 temporary employees were appointed and since the Perinoner was wait listed at 45 line was not appointed. The said settlements were bona fide which were the only workable solution and is bireding on the Petitioner. The Politioner is estepped from questioning the settlements finestly or indirectly and his claim is liable to be rejected. Figither, the said sentements were not questioned by any union so far and the settlements of bank leve) settlements and operated throughout the country. The Tamil Nado Industrial Establishment (Conforment of Permanent Status to Workman) Act, 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not corressly that the Petitioner was discharging the work or permanent messenger. As per settlements, vacancies upto 31-12.94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of faily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Peutioner has fulfilled the criteria secont by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Blank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right envarined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that ancer no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are :
 - (i) "Whether the demand of the Petkioner in Walt List No. 452 for restoring the wait list of temporary measurement in the Respondent/ Bank and consequential appointment

- ther upon as temporary measurger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait fisted in terros of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate carire on temp- mary basis. After engaging them intermittently for some years. the Petitionet in this case and other Petitioners in the connected disputes were terminated without any netice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Pention before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurrindly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Count at the time of final bearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bunk and has been marked as fix. MI. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as onjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that these Petitioners were recruited as temperary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employers and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) cutered into between the alleged Pederation and the Respondent/Management. They further correspond that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar mouths and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, is the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Purther, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the

Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL; BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has beld that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the beautift of the workmen to whom Section 25F applies but for all cases of retreachment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable fight for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2. W3 and W8 as well as Ex. M8 which constitute/relate to the circular instituctions of the Respondent/Hank issued from time to time in connection with the implementation of the settlements on absorption and which are standary in character. Forther, a combined study of Ex.MI and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw chal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C1 is quife appased to the doctrine of "last come—first go' or 'first come-tast go' and therefore, the categorization in Clause 1 it illegal. Clause 1 (a) of Ex.M1 provides an ope-vituality to persons who were engaged on casual basis. and altowed to work in leave/casual vacancies of messengers, farashes, cash cuolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines indutioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Ruther, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's citeulars/instructions. In such circumstances, the absorption of casuals along with the eligible calegories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual hasis should dos be given permanent appointment in the bank service. These casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have proposed only one wait list for each machile as per Ex.M (0) in this case. Those candidates under Ex. M10 were found suitable for appointment as measurgers and sweepers. Even MW 1 is despite to say as to when the wait list Ex.M10. was prepared, but it is reconsoned in Ex.M10 that it was prepared besiden the spitiement dated 17-11-87, 27-10-88 and 9-1-91 which are marked so Ex.Mi, M3 and M4 respectively. But, when MWI has spoken about the settlements, he disposed that spinionent dated 27-10-88~was

out included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2.5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No. 7872 of 1991, which is marked as an exhibit, in which it is stated that fit is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages dail / on mutual agreement basis. In such discumstances, as rightly contended the Respondent are not justified and combined the list of candidates envered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the preciment of MWI and the statements in Counter atatement are contiary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 want fist under Ex.M10 comprises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the hasis of industry-wise septement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution. of India. Therefore, the Petitinner contended that preparation of Ex.M 10 namely wait list is sext mounformity with the instructions of Ex.M1 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Fx W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P. No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published to The Hundu dates) 1-8-88. Furthermore, wait list under 1/x. M10 does not carry particulars about the condidates date of initial appointment and the number of days put in by them to arrive at their respective semority. From all these things, it is clear that ${
m Ex.}\,$ M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chemiai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been fold at

the time of initial appointment that their appointment was in leave vacancy. Porther, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vecency was used as a device: to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is combinious and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESTERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ wortmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense. since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. MIIO which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in uner violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment. will be offered appointment against existing/future vacancy. anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, male fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central). Hyderabad, it is neither a 18(3) sentement nor 12(3) scattement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/ Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge. about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference pariod and beace evidence of Respondent/ Bank has no amplication to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calcular months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandulory provisions of Section 25. and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the bratefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the relings reported in 1985 Π LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days. only when the workmen worked with haramer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which be had been paid wages either under express or implied contract of service or by compulsion of statute. standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1990's but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calcular months and they are in ago group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in tieu of the

provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with atterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was edgaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked at temporary messenger is also incorrect, they. were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafule which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the sentement and accordingly he was want listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermord, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings regioned in 1991 FLL 1323 ASSOCIATED QUASS INDUSTRIES LTD. <u>Ve</u> INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union cutered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the labsence of plea that the settlement reached in the course of conciliation is viriated by froud, nucrepresentation or coercium, the settlement is binding on the workmen," Learned counsel for the Respondent further relied on the rotings reponed in 1997 H LLJ 2189. ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Beach of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will beibinding on all workmen of the establishment, even those who belong to the minority union which had objected to five same. To that extent, it departs from the ordinary lawlef contracts, the object obviously is to uphold the sancity of settlements reached with the active assistance of the conciliation officer and to discourage ur individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud of even corruption or other inducements. Bus, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration " Learned counsel for the Respondent further relied on the rulings reported in 1997 LLLJ 308 K.C.P. LTD. Vx PRESIDING OFFICER AND OTHERS wherein the Supreme Lour, has held that "settlements are divuled into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement

of the first category has limited application and hinds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the consesting workmen were members and if there was nothing unreasonable or unfair in the terms of the sentement, it must be hinding on the contening workmen also." He further relied on the, rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INTERIORS I.TD, Vs. STATE OF RAJAS THAN AND OTHER Appetein the Supreme Court has held that "settlement is arrived as by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bong fide in nature or that it $k \mu_c$ been arrived at on account of fraud, nusrepresentation or conceolment of facis or even corruption and other inducements, is could be subject matter of yet anoth; industrial dispute v hich an appropriate Govt, may refe. for adjudication after examining the allegations as the ϵ is an underlying assumption that the settlement reache with the help of the conclusion officer must be fair an reasonable." Relying on all those decisions, learner. counsel for the Respondent contended that though it :: alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them. they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued thes no union of the bank has questioned the settlement and in such circumstances, it eached be said that it is not binding on them and he is estopped from disputing the same.

11. Learned course! for the Respondent further contended that though the reference made in shis case and other connected disputes is "whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers or the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?" The Petitioner contended that the notremblement made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reterence made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not ministatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rutings reported in 1998 LAB IC 34S SECRETARY, KOLLAM JILLAHOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL. KOLLAM wherein the Kerala High Court has be digital inner wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot gu beyond the order of reference, if points of difference are discernible from the

material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Peritioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998. LABIC 1664 VAN SAGNATHAN ORIENT PAPER MILLS V3 INDUSTRIAL TRIBLINAL & ORS, wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the plendings of parties." He also relied or the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a (air and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has hold that "the Tribunal has jurisdiction to consider all incidental morters also and the order of reference should not be construed in the manus: which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view. a should consider the order of reference in a fair and reasonable manuser, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrendament is valid or not, from the pleadings it is obtain that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance

- 13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Imbunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.
- 14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he

should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS V_{δ} , K. V., VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of safect list on reduction in number of vacancies was made in view of the impending absorption of steam surplus spaff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectors were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in E997 6 SCC 584 SYNDICATE BANK & ORS VASHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF ENDTA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with male fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. V4 PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad how temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-head temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available forthirm which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was heappointed in pursuance of a notification calling for applications; which means he had entered by a back door :(c) he was gint eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanker orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the merecontinuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends to several years. Further, there can be no rule of humb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to shiftling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and dircumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders. of lower Courts. He further relied on the decision reported. m 1997 iISCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation. or regularidation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner or on *ad-hoc* basis against an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a mon-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in fatility. It would amount to decorating a still born baby. Under these circumstanges, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular/vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings (eported in AIR 1997 SEC 3657 HIMANSHU) KUMAR VIDYARTHI & ORS V& STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these

circumstances, their disongagement from service connot. be construed to be a retreachment under the LD. Act. The concept of retrenchment therefore, curnot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on the rulings reported to 1994 3 LLJ (Sopp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following proviple of "last come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining junious. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 1 Secretary, State of Kamataka Vs. Uma Devi, the Supreme Court has held. that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of hisappointment, he would not be emitted to be absorbed in regular service or made permanent merely on the strength. of such continuance, if the original appointment was not made by following a due process of selection as cravisaged. by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees. whose period of employment has come to an end or of adhoe employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "itis not as if, the person who accepts an engagement either. temporary or casual in nature is not aware of his employment. He accepts the employment with open cycs. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to justison the constitutional scheme of appointment, perpenuate illegalities and to take the view that a person who has temporarily or casually got employed. should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment. which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely onthe strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh. wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council., Sujanpur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its comployees was bound to follow the recruitment rules. Any recruitment made in violation of such roles as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of preventing market economy, globalisation, privatisation and outsourcing is avident, in view of the settled legal position. as poticed hereinbefore."

16. Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allowed to them. Under such circumstances, it cannot be questioned by the Pennoner.

17. I find much force in the contention of the learned. counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements emered into between the Respondent/Bank and Pederation: at the time of reference, they have not questioned the sculement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the

sculement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of male fide, misrepresentation, fraud or even contuption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has gut sametioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in arrivaces of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Problemers are capitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not inticled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not equitien to claim regularisation or reinstatement in the Respondents' Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:-

The next point to be decided in this case is to what relief the Peritioner is cutitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him.) corrected and pronounced by me in the open court on this day the 31st January. 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Remainsch-

For the Petitioner

WW1 Srl R. Jayavelu

WW25rlV,S.Ekembaram

For the Respondent MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked :---

Ex. No. Date.

Description.

 $\mathbf{W}1$ 1-8-88 Xeros copy of the paper publication in daily Thanthi based on Ex. M.I.

=		THE GAZEFTE OF INDIA: AUGU			ANA 13, 1929 (PART II—SBC 3(
W2	20.4-89	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M.).	W	19 17-3-4	 Xerox copy of the Service particulars J. Velmurugan.
W3	2 4 4- 91		W	20 26 -3-9	 Xerox copy of the letter advisi selection of part time Menial—G. Pan
_		regarding absorption of daily wagers in messenger vacancies.	9 /2	21 31-3-9	
W4 W5	1-5-91 20-8-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W 2	22 Feb. 20	005 Xerox copy of the pay alip of T. Selfor the month of February, 2005 wait No. 395 of Madurai Circle.
W6	296-91 15-8-97	Xirrox copy of the advertisement in The Hindu extrading Period of qualifying service to daily wagers.	W2	3 13-2-9	
V7	25 1-97	Xerox copy of the circular letter of Zonal Office. Chemnal About filling up of vacancies of messenger poets.	W2	4 9-11-92	 Xerox copy of the Head Office circul No. 28 regarding norms for sanction;
7 J	4 >54 /	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger	W2;	5 9-7-92	messenger staff. Xerox copy of the minutes of the bipartimeeting.
78	NE :	Vacancies and filling them before 31-3-97. Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messangerial work.	W26	5 9-7-9 2	Xerox copy of the settlement betwee Respondent/Bank and All India Stat Bank of India Staff Federation for implementation of norms—creation opart time general attendants.
9	Nii 97.∳6	Xeros copy of the service certificate issued by Thiruvallus Branch. Xerox copy of the service certificate	W27	7-2-06	Xerox copy of the Local Head Office circular about conversion of part time employees and redesignate them a
11	4-7-96	branch.	W28	31-12-R	general attendants.
		Xerox copy of the service certificate issued by Ambattur industrial Estate branch.	Fort	he Remon	employees in subordinate cadre. deat/Management:
12	16-4-97	Xerox copy of the service certificate		io. Date	Description
	I .	issued by Amberiur Industrial Estate branch.	M 1	17-11-87	-
3	1992 93	Xerox copy of the attendance register.	M2	16-7-88	Xeroa copy of the sentement.
4	Ni	Xerox copy of the administrative	M3	27-10-88	
	,	pundelines in reference book on and?	M4	9-1-91	Xerox copy of the settlement,
		matters issued by Respondent/Bank regarding recruitment to subordinate	MS	30-7-96	Xerox copy of the settlement.
5	Na !	Xerox copy of the Reference book on	M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
		STATI matters Vol. III consolidated upto 31-12-95.	М7	28-5-91	Xerox copy of the order in W.P. No.7872/91,
6	6-3-97	Xerox copy of the call letter from Macharal zonal office for interview of messenger post—V. Muralikanosa.	MB	15-5-98	No. 2787/97 of High Court of Orissa.
7 (6-3-97	Xerox copy of the call latter from Madumi zonal office For interview of	M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
: (messenger post—K. Subbaruj.	Mio	NE	Xerox copy of the weit list of Cheunaj Module,
. •	•	Xerex copy of the call letter from Madural zonal office for interview of messenger post — J. Vehruragan.	МП	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No.1893/99.

न्द्रं दिल्ली, 19 जुल्ह्यं, 2007

वह आ. 2201.—औद्योकि विकाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केवीन सरकार, स्टेट मैंक ऑफ इंग्डिया के प्रकंशतंत्र के संबद्ध नियोक्कों और उनके कांग्डिसों के बीच, अनुबंध में निर्देश औद्योगिक विवाद में खेळीय सरकार औद्योगिक अधिकरण, चेवां के पंचाद (संदर्भ संख्या 243/2004) को प्रकारित करती है, वो केन्द्रीय सरकार को 20-7-2007 को प्रचा हुआ था।

[सं एल-12012/456/1998-आईआर(भी-I)] अभैन कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2201.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 243/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workman, received by the Central Government on 19-7-2007.

[No. L-12012/456/1998-JR (8-1)] AJAY KUMAR, Desk Officer

ANNEXIEE

REPORE THE CENTRAL GOVERNMENT INDUSTRIAL TREBUNAL-CUM-LABOUR COURT, CHRONAI

Wednesday, the 31st January, 2007
PRESENT

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 243/2004

[Principal Labour Court CCID No. 17999]

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman)

BEIWEEN

Sri P. Selvem

: I Party/Petitioner

AND

The Assistant General Manager,
State Bank of India,

: DParty/Management

Z. O. Chennai.

APPEARANCE.

For the Petitioner

 Sri V. S. Ekamberam, Authorised Regresentative

For the Management

: M/s. K. Vetramani,

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/456/98-IR (B-I) dated 12-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemni and the said Labour Court has taken the dispute on its file as CGID No. 170/99 and issued notices to both parties. Both either entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD.No. 243/2004.

The Schedule mentioned in that order is as follows:

"Wheatter the demand of the workman Shri P. Selvam, wait list No.607 for restoring the wait list of temporary measurems in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is cutified?"

The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Pethioner was approximed by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical exguination. He was appointed on temporary basis at Kalpakkam branch from 24-10-1979. The Petitioner was orally informed that his services were no more required. The non-comployment of the Petitioner and others because subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. This Respondent/ Bank, in addition to its county, filed a copy of estilement. under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were decired employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bunk brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kalpakkun branch. He was called for an interview by a Committee appointed by Respondent/Benk in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 30-5-1998, the Peritioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Chindatripet branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same puriod. While the Pethioner was working as such, the Manager of the branch informed the Peritioner ocally on 31-3-1997 that his services are not

required any more and he need not attend the office from 1-4-1997. Hence, the Peritioner raised a dispute with regard to his non-comployment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, he reference framed did not satisfy the grievance of the etitioner, he has made a fresh representation to Govt. to compider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as trained prior to 33-3: 1997 and to regularise him in service due course. The Respondent/Bank took up an recusonable stand that the service and the number of lays worked by Petitioner were treated as of no crossequence, since according to the Respondent/Bank, it ngaged that Peritinner only in temporary services after the attenuent. The Putilioner was not aware of settlement by which his skrvices and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondentifiant before the conciliation officer. Therefore, the Respondent's section in not absorbing him in regular service is unjust and illegal Further, the settlements are repusaunt to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepaied and the Respondent/Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temperary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing hims to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious informities and it is not based on strict seniority and without any rationale, Hence, for all these reasons the Patitioner grays to grant relief of regular employment in Respondent/Bank with all attendant behefits.

 As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribural itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of régular appointment/absorption does out arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not born fide and made with ulterior motive. The Petitioner concealed the material facts that he was whit fisted as per his length of engagement and could not be absorbed as he was positioned down to seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance. of duties as messenger and such engagements were

prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was expoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under section 18(3). of 1.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait itsted as candidate No.607 in wait list of Zonal Office, Chennan, Sc far 357 wait listed temporary candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank, it is false to allege that the Peritioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it acose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenduncin provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate. temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the ent off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in ragular permatient vacancies. In terms of aforesaid sertlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait tissed at 607 he was not appointed. The said settlements. were bone fide which were the only workable solution and is binding on the Peditioner. The Petitioner is estapped from questioning the settlements directly or indirectly and his Gaum is hable to be rejected. Further, the said sextlements were not questioned by any union so far and the settlements of bank level sertiements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has

no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria secour. by the Respondent/Hank for selection of candidate for appointment in the post of messenger and other class [V post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bunk is duty bound to regularise the services of the Petitioner as he has acquired the valuable right. enshrined in the Constitution of India. In the year 1993, the Respondent/Bank has issued a circular to the effect that under no vircumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future. employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with alterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims and funcies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions faid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are constrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

- 7. In these circumstances, the points for my consideration are:
 - "Whether the demand of the Petitioner in Wait.
 List No. 607 for restoring the wait list of

temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been aponaored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court. to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court. at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or potice denied as opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenctament as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

On behalf of the Petitioner, it is comended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and . any settlement in this regard is redundant and in any \mathbb{Q} case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they

have invoked the relevant provisions of Chapter VA of the LD. Act and it is preposterous to contend that the Petitionel has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retreached messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V.A of the LD. Ask providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all dases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenctied workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondens/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. MI and the averments of MW11 and MW2 and their testimonies during the cross-examination will clearly abow how the bank has given a rawifical to the Petitioner from the beginning linking his fature with the settlements. Further, Clause I of Ex. MI deals with categorization of retreached temporary employees fato 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of flast come — first go" or first chine—last go" and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex. MI provides an opportunity|so persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absolption along with the other eligible categories of temporary employees is not valid. Further, engaging casoals to do messengerial work is in contravention of the guidelines rijentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Purther, the appointment of daily wage basis for regular messengerial jobs etc. and strictly prohibited as per bank's circulars/ instructions. In such circumstances, the absorption of cusuals along with the cligible categories is not valid. Therefore, these persons who were engaged by the Respondent Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given unbre beneficial treatment in the matter of arriving at qualifying service for interview and selection. Hut, temporary exployees have not been informed about this amendment which includes casuals affecting their interest and chance. Purther, as per instructions in Ex.W2 foor types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment is messengers and sweepers. Even MW I is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based

on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as $E_{\rm A}$, MI, M3 and M4 respectively, But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 semiement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averagent of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comparises of both messengerial and non-messengerial candidates While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, $\mathbf{E}_{\mathbf{X}}$, $\mathbf{M3}$ provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, do wait list was released/published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-28, Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex, M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Maduzai and only during the year 2003 the Respondent/Bank produced the wait list

Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on hehalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before of after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy. was used as a device to take them out of the principal clause 2 (oo) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Purther, the representative of the Petitionez relied on the ratings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as buddles casuals. or temporaries and to continue them at such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority. in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in other violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/foture vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed. to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temperary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated. 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement not 12(3). settlement as claimed by the Respondent/Flank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any

bearing in the case of the Petitioner. Further, though the Respondent/Monagement has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001. and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months. as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits. under the provisions of LD. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar. months. He also relied on the rulings reported in 1985 JJ LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean "that those days. only when the workmen worked with hammer, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the camployer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrendment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of seulements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days. and more in a continuous period of 12 calendar months. and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes.

were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bons fide and are made with alterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positiohed down in the seniority. The Respondent/ Rank was edgaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bona fifte which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly be was wait histed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said sentements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Purther, he relied on the rulings reported in 1991 I LLJ 323 ASSOCIATED CLASS IND (ISTRIES LTD, V3. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. \$ut the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of concillation is vitiated by fraud, misrepresentation or coercion, the sentement is binding on the workreen." Learned counsel for the Respondent further reflection the rulings reported in 1997 Π LLF 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be kinding on all workmen of the establishment. even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assurance of the conciliution officer and to discourage an individual employee or a minority union from scutting the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud orieven corruption or other inducements, But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent

further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. V_5 , PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under section 18(1) of the LD. Act and (U) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the culings reported in AIR 2000. SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. V_{3} . STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is prefixed at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bong fide in nature or that it has been arrived at on account of froud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Pederation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the SAUTHE,

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenshility of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on metits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which be relied on the rulings reported in 1998. LABIC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS, wherein the Madhya. Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also refied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR. COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR. 1993 SC 569 the Supreme Court has held that "the Tribuna" has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Rank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is emitted to be reinstated in service as alleged. by him and whether he is entitled to the back wages as aileged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief grayed for by the Petitioner can be given to him or not? Bet, I find that the settlement was validly entered into

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between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings. reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIIEESH wherein the Supreme Court has held that "the only question which falls for determination." in this appeal is whether a candidate whose name appears. in the select list on the basis of competitive examination. acquires a right of appointment in Govt, service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the another of vacancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining sciences were given appointments according to their comparative merits. In which, the Supreme Court has held. that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Banch, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH 🗛 UNION OF INDIA wherein the Supreme Court has hald. that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent. contended that since the Petitioner has no ngbt to question. the wait list and since there is no male fine on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF

HARYANA AND ORS. Vs. PIARASINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is: available for him which means creation of a vacancy: (b) he was not spensored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means be had entered by a back door : (c) be was oot eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions reflect apon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hac employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and pircumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions; must be held to be totally untenable and unsusuainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported. in 1997 II SCC I ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a gon-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstantes, there was no occasion to regularise them of to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a

multity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigences and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU. KUMAR VIDYARTHI & ORS V. STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on duity wages. Under these circumstances, their disengagement from service cannot be construed to be a retreachment under the LD. Act. The concept of retreachment therefore, cannot be stretched to such an extent as to enverthese employees. Since they are unly daily wage employees and have no right to the posts. their disengagement is not arbitrary." He, further relied on the rulings reported in 1994 5 LLJ (Supp.) 754 wherein the Rajasthan High Court has hold that "Thider Section 25G of the LD. Act retrenchment procedure following principle of 'last come-first goll is not mandatory but only directory, only sufficient grounds shown, the employer is permitted to depart from the said principle repenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence. that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Pentiumer. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with

Learned Schlor Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKAYS, UMA DEVI, the Supreme Court has held that merely because a temporary. employee or a casual wage worker is continued for a time. beyond the term of his appointment, he would not be cotitled to be absorbed in regular service or made permanent. merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant inules. It is not open to the Court to prevent regular retruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temperary or casual in nature. is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bergain not at arms length since he might have been scarching for some employment so as to eke out. his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or vasually got employed should be directed to be continued.

permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held than "unless the appointment is in terms of the relevant. rules and after a proper competition among qualified. persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made. permanent merely on the strength of such continuance, if the original appointment was not made by following a ducprocess of solection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FEKTILIZERS LTD, AND OTHERS Vs. SOMVIR SINCH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUIANPUR Va. SURENDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshriped under Article 14 and 16. of the Constitution of India would be void in law." Further, in 2006 2 LEN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days. of service by that itself, would not confer any logal right. upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard. to the changes in the policy decisions of the Government. in the waite of prevailing market economy, globalisation, privatisation and outsometing is evident, in view of the settled legal position, as noticed hereinhefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not emitted to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities. was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the seattements which were subsequently amended by seattements, the Petitioners cannot now question either

the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

- 17. I find much force in the contention of the learned. counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard. to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement. and they have not alleged that settlement was not a bona. fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.
- 18. Further, the representative for the Petitioner comended that in a similar cases, this Tribunal had ordered for reinstallment with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.
- 19. But, I find since the Supreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The pext point to be decided in this case is to what relief the Petitioner is entitled?

- 20. In view of my foregoing findings that the Petitioner is a temporary employee and be is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - Thus, the reference is answered accordingly.
- (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).
 - K. JAYARAMAN, Presiding Officer

Witte	esses Exam	ined:—	W16	6-3-97	Xerox copy of the call letter from Madura
For the Petitioner WW1 Sri P. Selvarn WW2 Sri V. S. Ekambacum					zonal office for interview of messenge post -4 . Volumeugan.
For the Respondent MW1 Sri C. Mariappan MW2 Sri C. Ramalinear i			W17	17-3-97	Xerox copy of the service particulars J. Velmuragan.
Documents Marked :			₩ 18	26/3/97	Xerox copy of the letter advising
Ex. No	1. () aju:	Description	181.0		selection of part time Menial—G. Pandi
Wi	i-8 58	Xerox copy of the paper publication in daily Thanthi based on Ex. M.)	W19	31 3-97	Xerox copy of the appointment order of Sri G. Pandi
W2	20-4-#B	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.	W20	Feb. 2005	Xerox copy of the pay slip of T. Seka for the copth of February, 2005 wait lis No. 395 of Madurai Circle.
₩3	1.4.4.4.1 1.	Kerox, copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in	W21	13-02-95	Xerox copy of the Madorai Moduli Circular letter about l'argaging lemporar copployees from the panel of wait list
W4	15.51	Mossenger vacancies.	W <u>22</u>	0 9- 31-92	Xerox copy of the Head Office circula No. 28 regarding Norms for sanction of
7F4	15001	Xerox copy of the advantisement in The Hindu on daily wages hased on Ex. W.4.			messenger stæff.
W3	20-8-€1	Xerox copy of the advertisement in The Hindu extending Period of qualifying	W23	(19407-97)	Acres copy of the minutes of the Bipartin maeting
W6	15 34N	Service to daily wagers.	W24	09-07-92	Xelox copy of the settlement between Respondent/Bank and All India Staff
		Xeron cupy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.			Bank of India Staff Federation fo implementation of norms creation of par- time general attendants.
W 7	25-3-¶/	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W25	07-02-06	Xcrox copy of the local Head Offic circular about Conversion of part tim employees and redesignate them a general anendants
B.M	NīI ı	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to	W756	31-12-85	Xerox copy of the logal Head Offic circula: about Appointment o Respicacy employees in subordinate sales.
W 9	6-5-80	do messengeral work. Xerox copy of the service certificate.	For th	ne Respanselo	out Michagement .:
79.3	D-3-144	issued by Kalpakkam branch.	Ex. N	o. 1381 8	Description
WIO	22-3-96	Xerox 40py of the service certificate	Μi	(7-H4C	Nesex copy of the settlement.
		issued by Thousand Lights branch.	M.C	16407-84	Kerox copy of the settlement.
W11	:7-1 97	Xerox copy of the service certificate	M9	27.40488	Net ox copy of the settlement.
	•	issued by Ashok Nagar branch.	M4	UN-01-51	Kerox copy of the softlement.
W12	Nil	Xerox copy of the administrative	515	T(H)7-96	Ketox copy of the serilement
	•	guidelines in reference book on staff matters issued by Respondent/Bank	Мо	09-06-55	Natural engry of the minutes of conciliation or pareedings
		regarding recruitment to subordinate care and service conditions.	М7	28-05 %.	Acrox copy of the order in W.F ${\rm No} 787295$.
W13	NSI .	Nerox copy of the Reference book on Staff matters Vol. III consolidated upto	548	(5 -65-9 6)	Name copy of the order is Q.P. No C787/97 of High Court of Orissa.
W]4	6-3-97	31-12.95. Xeros, copy of the call lester from Madura.	559	Kružáki	Nertox copy of the order of Supreme Cous in SLP No. 308 399.
	;	zonal office for interview of messenger post— V. Matalikannan.	M:0	Në	Xerox copy of the wait last of Chenna Module
W18	63-97	Xerox copy of the call letter from Madural 2006 office For interview of messenger post—K. Subburaj.	Mil	25-10-99	Xerox copy of the order passed in CMI No.16289 and 16290999 in W.A. No 189399.

नई दिल्ली, 19 जुलाई, 2007

का, आ. 2202, — औद्योगिक विवाद अधिनयम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इण्डिया के प्रवंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिध्ट औसोगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 221/2004) को प्रकारित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं. एल-12012/345/98-आईआर(चै-I)] अवय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2202.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 221/2004) of the Central Government, Industrial Tribunal-cambabour Court, Chennal as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No. L-12012/345/98-IR (B-I)] AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAL

Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 221/2004 [Principal Labour Court CGID No. 59/99]

(In the matter of the dispute for adjudication under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the fodustrial Disputes Act, 1947 (14 of 1947), between the

Management of State Bank of India and their workmen) **RETWEEN**

Sri A. Sekar

: [Party/Petitioner]

AND

The Assistant General Manager,

: II Party/Management

State Bank of India, Z. O. Chemai.

APPEARANCE

For the Peritioner

: Sri V.S.Ekambaram,

Authorised Representative

For the Management

: M/s. K. S. Sundar,

Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L. 12012/345/98-IR (B-I) dated 03-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemia and the said Labour Court has taken the dispute on its file as (Ci)1) No. 59/99 and issued notices to both parties. Both sides entered appearance and filed their Claim Statement and Counter Statement respectively. After the constitution of this CGIT-con-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as 1-D. No. 221/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri A. Sekar, wait list No. 392 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified?" If so, to what relief the said workman is entitled?"

3. The allegations of the Peninoner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State. Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Siruthozhil branch from 10-06-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its complex, filed a copy of settlement. under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Pederation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was noreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Siruthozhil branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 10-6-1981, the Petitioner has been working as a temporary messenger and some time performing work in other branches also. While working on temporary basis in Anna Nagar West branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required.

any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal. the reference framed did not satisfy the grievance of the Potitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the semiement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing bim in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement. speaks about three categories only a single wait list has been prepared and the Respondent/Bank bus been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either. by payment of perty cash or by directing him to work under assumed pame or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant retief of apgular employment in Respondent/Bank with all attendant! benefits:

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govr. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitionet is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 1 $\beta(1)$ and 18(3) of 1.D. Act in field of provisions of law, retrendiment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts. that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority; Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was especiated by State Bank of India Staff. Federation which resulted in five settlements dated 17-16-87, 16-07-88, 07-10-88, 9-1-91 and 30-7, 96. The said seitlements became subject matter of conciliation proceedings auxiliaringues were drawn under section 18(3). of J.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait likted as candidate No.392 in wait list. of Zonal Office, Cherman So far 357 wait Instead temperary candidates, our of 744 wait Ested temporary employees. were permanently appointed by Respondent/Bank, it is: false to allege that the Peticoner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements. drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged. for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A. B. and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate. remperary service in any continuous block of **36 calendar**. months and under category (C) the temporary employees who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or minimum 70 days. aggregate temporary service in any continuous block of 36. dalendar months were to be considered. As per classe ${\cal T}_{\rm cl}$ the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-99 for filling up vacancies which were to arise upon 31-12-91. The Peritioner has no valid and enforceable right for appointment. The Respondent had amplemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in gave vacancies and not in regular permanear vacancies. In terms of aforesaid settlements, out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 392 he was not appointed. The said settlements were bross fide which were the only werkable solution and is binding on the Patitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any carbon so far and the settlements. of bank level settlements and operated Stroughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. does not apply to Respondent/Bank and this Tribional has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified

before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Petitioner as he has acquired the valuable right. enshriped in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with ulterior motive. The Respondent/Bank. has been arbitrarily filling up the vacancies with the persons. other than wait listed workmen according to their whims. and fancies. Hence, the Petitioner prays that an award may he passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner, Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are :—
 - (i) "Whether the demand of the Petitioner in Wait List No. 392 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1:-

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. hy Employment Exchange and they having been called for interview and having been selected and wait fisted in terms. of the relevant guidelines/eirculars of the Respondent/Bank. in permanent vacancies in subordinate cadre on temporary. basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees. Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civit) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This sentement has become an exhibit of the Respondent/Bank. and has been marked as Ex. Ml. The Petitioner in this case. and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On behalf of the Petitioner, it is contended that: these Petitioners were recruited as temporary employees. in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines curry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenehed messengers

and are oligible to be reinstated. Learned representative for the Petuipper contended that in 1996 LAB & IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the 1D. Act providing for retremphyment is not enacted only for the benefit of the workniej: to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrembed workmen. Therefore, the contention of the Respondent/ Bank that the Petationer has no valid and enforceable ment for appointment is unagraphic, it as further contended that on behalf of the Petisioner that Ex.W2, W3 and W8 as well as Ex. MR which constitute/relate to the circular instructions of the Respondent/Bank issued from time to ringe in connection with the implementation of the settlements on absorption and which are stantiony in character. Further, a combined study of Ex.MI and the averments of MW (and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause I of Ex. Mt deals with Categoritation of retreached lemporary employees into "A., B and C1, but this categorization of 'A, B and C' is quite. opposed to the doctrine of flast come—first gof or first come—[ast go? and therefore, the categorization in Clause. I is illegal. Clause 1 (a) of Ex.M1 provides an opportunity to persoria who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, Cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees. is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as $\mathsf{Ex.W} \$$. Further, the apparenment of daily wage basis (or regular messengerial jobs etc. are strictly prohibited as per bank's eleculars/insuractions, in such circumstances, the absorption of casuals along with the eligible categories is: not valid. Therefore, these persons who were engaged by the Resphotent/Bank on casual basis should not be given permanent appointment in the bank service. Those cusuals were given more beneficial treatment in the matter of an iving at qualifying service for interview and selection. But, temperaty employees have not been informed about this amendment which includes casuals affecting their interest and change. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent Bank had alleged to have prepared only one wait list for each module as per Ex. M 10 in this case. Those candidates. under E4.M10 were found suitable for appointment as messengers and sweepers. Even MW I is unable to say as to when the wait list Ex. M 10 was prepared, but it is mentioned in Ex. M 10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.Ml, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called noninclusion except his baild statement. Further, according to

MW I wait list under Ex.M10 was prepared on 2-5-92 but there is no pleaning in the Counter Statement with regard to this wait list. Further the Hoo'ble High Court has head in its order dated $^{2}\sim7.99$ to W.P.No.7872 of 1991 , which is marked as an exhibit, in which it is stuted that "it is clear that the 1987 scale ment was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages. darly on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to writigle out the illegasity creamined or perpentited by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW I wast list under Fx.M10 comparises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wase settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the 6250als as in the case of temporary employees in the matter. of absorption. Therefore, it is violative of Article 14 and 16. of Constitution of India. Therefore, the Petitioner contendos that preparation of Ex. M (0) namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as perinstructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore. no wait list was released / published even after the Court order in WMP No.11932/91 in W.P. Nn.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1.8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date. of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation. of instructions and ceased to have the credibility attached. to the wait list. Above all, Ex. M1 was not produced at the time of conciliation propertings held during the year 1997-98 held at Chemna: and Madura; and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10. before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged to leave vacancy, they have not been fold at the time of initial appointment that their appointment was in leave vacancy. Parther, even before or after the settlernem on absorption of temporally employees. the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the LD, Act, 1947. Though the Petitioner's weak in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sasary Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SOC 201 H.D. SINGHVs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workings as "badlies casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 want list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also had in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in after violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the semiority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the avernient of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala fide and illegal and the Respondent/ Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderahad, it is neither a 18(3) sendement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M 1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ccased to have any relevance when the main writ has been disposed. of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management winceses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as I.v., M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service. of the Respondent/Bank and they are entitled to the benefits under the provisions of L.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rolings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has beld that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with handred, sickle or penbut must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the hank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar meaths and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favor

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estupped from making claim as they had accepted the semienterits drawn under the provisions of Section 18(1) and 18(3) of the LD. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/ Bank wastengaging, temporary employees due to business. exigency for the performance of duties as messenger. Further the allegation that he was sponsored by Fungley meat Exchange is incorrect and the allegation that he worked as temporary messenger is also meomeet, they were engaged against leave vacuncies. The settlement entered into by the Respondent/Bank and the federation were broughted which were the only workable solution and is binding on the Petirioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore. the Petitiquer is escopped from questioning the sentlement directly of indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any umonjand the settlements were bank level sentements. and operate throughout the country. Further, he relied on the ruling shapested in 1991 FLLJ 323 ASSOCIATED GLASS. ÎNDUSTRIES L'ID. Vs. INDUSTRIAL TRIBUNAL A.P. AND O'BARS wherein under Section 12(3) the union entered into a semigroup with the management settling the claim of 11 workmen and the workmen resigned from the job and reperved terminal benefits, but the workmen spised. a plea before the Tribunal that they did not resign voluntarily: But the Andhra Pradesh High Court has held that "in the absence of plan that the settlement reached in the equation of conciliation is vitiated by fraud. misrepresentation or correion, the settlement is binding on the warkman." Learned counsel for the Respondent further rejection the rolings reported in 1997 IIII 1.1 1189. ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wheremen Division Bench of the Bombay High Coun has held that "therefore a sessement arrived at in the course of the empolication proceedings with a recognised majority union will be hinding on all workmen of the establishment. even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contrasts the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scunling the settlement." It further held that "there may be exceptional cases, where there may be allegations of male. fides, frankt or even corruption ar other inducements. But, in the abpence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further reflection the rollings reported in 1997 J.L.L.I 308 K.C.P. LTD. V: PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) thank arrived at carride the conclusion promoedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3), 4 scallement of the first category has limited application and binds merely parties to it and settlement of the second cutegory made with a recognised majority union has extended application as it will be binding on all workman of the outphishmens. Even in case of the first owngory, if

the rettlement was reached with a representative union 6). which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workman. also. The further relied on the indings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wiretein. the Supreme Court has held that "scattement is arrived or by the free well of the parties and it a pointer to there being good with between them. When there is a dispute that the settlement is not bong fide in nature or that it has been arrived aron account at traud, misrepresentation or concealment of facts or even corruption and other inducements it could be subject matter of yet another industrial dispute which an appropriate Gost, may refer for adjudy attor after countring the alleganism as there Is the underlying distance that the settlement reached with the help of the conclination officer must be fair and remorable "Retaing on all these decisions framed counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Patrioner is a surme among them. they have entered into sortlement with the bank and therefore, it is binding on the Patitioner. Further, he argued that no union of the hank has questioned the settlement and in such discurres convey at cannot be said that it is not binding on them and he is estemped from disputing the

II. Learned counse, for the Respondent former contended that though the reference made in this case and other connected disputes is Twhether the demand of the workman with worklish No. given for restoring the wait list of feedpointry measuragers in the establishment of Respondent/Bank and consequential appointment therepaper as temporary messenger is justified? The Petitiones contended that the retreathment made by the Respondent/Bank is not valid and be has to be reinstated in service with full hack wages are Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Count has to see whether the restoration of can has can be made as contended by the Petitioner and not to instatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner b is contended that mere wording of reference is not decisive in the matter of tenahility of a reference and he relied on the ratings reported in 1998 LAB IC 345 SECRETARY. KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL. KOLLAM wherein the Kerala High Count has held that there wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal connut go beyone the order of reference, if points of difference are descenible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardshop insolved in moving the machinety again. It further held that the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or for for which he relied on the rulings reported in 1998. LAB KU 1664 VAN SAGNATHAN ORIENT PAPER MILLS 14. INDESTRIAL TRIBUNAL & ORS, wherein the Madhya Pradesh High Court has held that Tibe Tribunal cannot go behind the terms of reference, but that does not mean that Transport look into the pleadings of parties." He also relied on the rollings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vy PRESIDENG OFFICER, LABOUR COURCE MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not altempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable mateer." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal his jurisdiction to consider all incidental matters also and the order of reference should not be construed in the cosmes which would prolong the industrial adjudication. The Labout Court is expected to decide the real nature of disputes between the parties and with that object in view, ii should consider the order of reference in a fair and Masonable manner, though the order of reference is not coppuly framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as afleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the sole of the Respondent that it is beyond the scope of reference is without any substance.

- 33. I find some force in the contention of the representative for the Petitioner. Pherefore, I find this Tribuntal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank. I find the Petitioner is not entitled to question the settlement.
- 4. Then the learned counsel for the Respondent contexced that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings, reconcil in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears.

in the select list on the basis of competitive examination acquires a right of appointment in GovL service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the inspending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of varancies and consequently, a certain number of bottom. persons were removed from the select list and the remaining solection were given appointments according to their comparative ments. In which, the Supreme Court has held that "in such discumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held. that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment. in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents this not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Jodge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Perinjoner has no right to question. the wait list and, since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wan list was made with mata fide motive. Under such discumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead (or restoration of the wait list and he cannot pray for reinstatement as alleged by him. Firether, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad boo temporary employees. who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ Emporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door. (c) he was not eligible and qualified for the post at the time

of his appropriate ent; (d) his record of service since his appointment is not satisfactory. These are the additional profetants spainted by us in para 12 which would arise from greate of spen blanket orders. None of the decisions relied upon by the High Court justify such wholesale. associately sai orders. Moreover, from the mere restings be of an ad-nec employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance. extends so several years. Further, there can be no role of thoses to such matters. Conditions and circumstances of one unit stay tak be the same as of the other. Just because en ene :: 134 la direction was given to regularise employees. who have put in one year's service as far as possible and subject to \$20195ing the qualifications, it cannot be held. that in as \$1 and every case, such a direction must follow: arrespectante of and without taking into account the other releves/ citrum-cances and considerations. The relief must Se mouldail in each case having segard to all the releases. facts and discounstances of that case. It cannot be 🧸 weathamenal act has a judicious one. From this, the imal office to directions must be bold to be totally untenable ann unsustainable. Thus, the Supreme Court set aside the orders. of lower Charts. He forther relied on the decision recorted. in 1997 ITSEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF HIMAR AND OTHERS wherein the Full Beach. of the Sepreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and word is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate. would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent. on such a mon-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a mullity." 'Therefore, learned counsel for the Respondent contended that these temporary employees were appointed. only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank, Further, he relied on the rutings reported in AJR 1997 SCC 3657 HIMANSHU KUMAR YIDYARTHE& ORS V., STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporaryjemployees working on daily wages. Under these circumstaboes, their disengagement from service cannot be construed to be a retreachment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retreachment procedure following principle of llast come-first golds not mandatory but only directory, exsufficient grounds shown, the employer is permitted to depart from the said principle settenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his content have been made permanent in banking service, he has not established with any evidence. that his junious were made permanent by the Respondent/ Bank, Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this. Tribunal that he has worked more days than the Peithoner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the clama is to be dismissed with

 Learned Septim Advicage further argued that even. in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNAUNKA VS. UMA DEVI, the Supreme. Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant trules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts acceptagement either temporary (motoreal) in nature. is not aware of his proployment. He accepts the eachloymeness thinge newes. It may be true that he is not ina position to bargas, not at arms length since he might have been searching the same employment so as to eke out. his likelihood and seconds whatever he gets. But on that ground asono, it would not be appropriate to justison the constitutional actions of appointment, perpetuate illegalities. and to take the view that a person who has temporarily or tasusily got employed should be directed to be continued. permanently. By during and it will be creating another mode. ന് public appointment which is not permissible." Further, the Supreme Coast with. Taying down the law, has clearly. held that Trunicus for not continent is in terms of the relevant. reles and ester a proper competition among qualified persons, the same would not confer any right on the appropries to the intermediate of their merely because a reraporery corpuly to so a casual wage worker is continued. for a time beyond the term of his appointment, he would and be entitled to be absorbed in regular service or made. permanent merely on the strength of souli continuance, if the original uppy intoche was not made by following a ducprocess of selection as envisaged by relevant rules. Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS VS. SOMVTR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Purther, in CDJ 2006. SC 395 MUNICIPAL COUNCIL, SUJANPUR VS. SURINDER KLIMAR, the Supreme Court has held that "it is not disjunted that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVILOPMENT CORPORATION VS. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service. " The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel. for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five seulements entered into between the Respondent/Bank and Pederation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mais fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident. I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007).

K. JAYARAMAN, Presiding Officer

Witnesses Examined:

For the Petitioner

WWI Sri A. Sekar

WW2 Sri V. S. Ekarobaram

For the Respondent

MW1 Sri C. Mariappan MW2 Sri C. Ramalingam

Documents Marked:

Ex. No. Date	Description

V1 1-8-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

W2 204-88 Xerox copy of the administrative guidelines issued by Respondent/Bank

for implementation of Ex. M1.

5100 —		THE GAZETTE OF INDIA: AUGUST	4. 200	7/SRAVAN	A 13, 1929 [Part II $S(\phi/3(n))$
W 3	24-4-9	Xerox copy of the circular of Respondent/Bank to all Branches	W20	26 (13 97	Xerex copy of the letter advising selection of part time Mental—G. Pandi
T 174		regarding absorption of daily wagers in Messenger vacancies.	W21	31 3 97	Xerux copy of the appointment order to Sri G. Panda.
W 4	01-05-91 20-08-91	Xerox copy of the advertisement in the Hindu on daily wages based on Ex. W4.	₩ <u>≥</u>	Feh. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2003 wait list
	; ;	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W 23	13-02-95	No. 395 of Madural Circle Xerox copy of the Madural Module Circular letter about Imaging temporary
W6	15-3 9 7 i	Xerox copy of the circular letter of Zonal Office. Chemnai About filling up of vacancies of messenger posts.	W24	09 -11-93	employees from the panel of wait list. Xerox copy of the Head Office circular No. 28 regarding Norms for sonction of
W 7	25-3-91	Xerox copy of the circular of Respondent/Bank to all Branches			messenger staff.
	:	regarding identification of messenger rucancies and filling them before	W25	094/7-92	Xerox copy of the minutes of the Bipartite meeting
ws	Nii :	31-3-97. Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to	W26	09407-92	Kerox copy of the seldement herwich Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms creation of partition general attendants.
w9 wto	14-(9-8)	do messengerial work, Xeros copy of the service certificate issued by Simuhozhil Branch. Xerox copy of the service certificate.	W 27	07-02-06	Xerro copy of the local Head Office circular about Conversion of part time employees and redesignate them as general arrendants
W11	10-6 89	issued by Mannady Branch. Xerox copy of the service certificate issued by Purasawalkam Branch.	W28	31-12-85	Xerox copy of the local Head Office circular along. Appointment of temperary employees in subordinate cafee.
₩12	25-08-8 9 :	Xerox copy of the service certificate issued by Triplicane Branch.	For the Respondent/Management :		
W 13	21-12 90	Xerox copy of the service certificate	Ex. N	o. Date	Description
		issued by Anna Nagar Branch,	Ml	17-11-87	Xerox copy of the seulement.
W14	ND :	Xerox copy of the administrative guidelines in reference book on staff	M2	16-07-88	Xerox copy of the scalement.
	i	matters issued by Respondent/Bank	M3	27-10-88	Xerex copy of the settlement.
	:	regarding recruitment to subordinate care & service conditions,	M4	09 01-91	Xerox copy of the settlement.
W]5	Nil .	Xerox copy of the Reference book on	MS	30407-96	Xerox copy to the settlement.
		Staff matters Vol. III consolidated upto 31-12-95.	M6	09-06-95	Xerox copy of the minutes of conclitation proceedings.
W16	00 03-9Å	Xerox copy of the call letter from Maduraj Zonal Office for interview of messenger	M7	28-06-91	Nerox copy of the order in $W.P.\ No.7877991$
W]7	06-03-97	post—V. Muralikannan Xerox copy of the call letter from	М8	15 (64%	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
		Madurai zonal office For interview of messenger post—K. Subburaj	M9	10 (7/29)	Xerox copy of the order of Supreme Countries SLP No. 3082/99
W 18	06-03-97	Xerox copy of the call lener from Madurai zonal of fire for interview of messenger post — J. Vetmorigan	M10	Nil	Xerox copy of the wait list of Chennai Module.
W19	17-03-97	Xerox copy of the Service particulars— J. Velmurugan	M13	25-10-99	Xerox copy of the order passed in CMP No.16389 and 16290/99 in W.A. No. 1868/00

1893/99

J. Velmunigan

नई दिल्ली, 19 जुलाई, 2007

कर,आ. 2203.— औद्योगिक विवाद अधिनिकम, 1947 (1947 क. 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ओफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेंबई के पंचाट (संदर्भ संख्या 234/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्राप्त हुआ था।

[सं एल-12012/442/98-आईआर(बी-I)] अजय कुमार, डेस्क अधिकारी

New Delhi, the 19th July, 2007

8.0. 1203.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 234/2004) of the Central Government, Industrial Tribunal-cum-Labour Court, Chemia as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7 2007.

[No.L-12012/442/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXTER

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CLIM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT:

K. JAYARAMAN, Presiding Officer Industrial Dispute No. 234/2004

[Principal Labour Court CGID No. 160/99]

(In the matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Maanagement of State Bank of India and their workmen)

BETWEEN

Sri R. S. Sinasulwamanian

: TParty/Petitioner

AND

The Assistant General Manager,

: II Party/Management

State Bank of India, Z.O. Chennai.

APPEARANCE

For the Petitioner

: Sri V. S. Ekamberam,

Authorised Representative

For the Management

 M/s. K.S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. L-12012/442/98-TR (B. I) dated 12-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chemai and the said Labour Court has taken the dispute on its file as CGID No. 16099 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as LD. No. 234/2004.

The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri R.S. Sivasubrammian, wait list No.513 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger. after an interview and medical examination. He was appointed on temporary basis at Royapettah branch from 30-09-85. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/ Bank, in addition to its counter, filed a copy of seulement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was nureasonable, the Respondent/Bank brought to the notice of the Petitioner. about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Royapettah branch. He was called for an interview by a Committee appointed by Respondent/Hank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Mandaveli branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the

Peritioner orbity on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure. the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grevance of the Petitioner, he has made a fresh representation to Govt, to reconsider the reference and the Petitioner requested the Respondent/ Bank to captique to engage him in service as obtained prior to 31₄3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner overe treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner duty in temporary services after the vontement. The Petitroper was not aware of settlement by which his services and number of days worked by him after interview do not merji consideration. The Politioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation of fiver. Therefore, the Respondent's action in obtahsorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the LD. Act. The termination of the Peritioner is against the provisions of Para 527(4) of Sastry Award, Eventhough the settlement speaks about three categories only a single whit list has been prepared and the Respondent/ Bank has been Regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same workleither by payment of petty cash or by directing him to work under assumed name or by both which amounts. to unfair fabour practice. The wait list suffers sections. infirmities and it is not based on strict seniority and withour any rationale. Hence, for all these reasons the Peritioner peays to grant relief of regular employment in Respondent/ Bank with all attendant benefits.

 As against this, the Respondent to its Counter Statement falleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim. Statement, The settlement drawn under provisions of Section 18(1) and 18(3) of LD. Act in lieu of provisions of law, setteraturent and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior requive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/ Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those emptoyees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five scrtlements dated 17 | 11-87, 16-07-89, 07-10-88, 9-1-91 and 30-7-96. The said sentements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of 1.D. Act. In terms therent, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petnioner was weit listed as candidate No.510 in wait list of Zonal Office, Chennai, So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is talse in allege that the Petitioner worked as a temporary messanger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner baving submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above. cannot turn proped and claim appointment. Such of these temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility oriteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service to any continuous block of 36 calendar months and under category (C) the temporary employees. who have completed 30 days appregate temporary service ın pay çalepdar year after 1-7-75 or minimum 70 days ageregate remporary service in any continuous block of 36. calendar moistis were to be considered. As per clause 7. the length of temporary service was to be considered for sensority in the wait list and it was also agreed that wait list. was to lapse in December, 1991 and the cut off dute was extended up to 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary. employees were working in leave vacancies and not in regular permanent vacazivies. In terms of atoresaid settlements, our of 744 want listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 510 he way not appointed. The said settlements were bona (ide which were the only workable solution and is hinding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable in be rejected. Further, the said semicinents. were not questioned by any union so far and the semicments of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permationt Status to Workmen) Act. 1981. does not apply to Respondent Bank and this Tribunat has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has on cisim for permanent absorption. Hence, for all these teasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class ${f N}$ post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment, Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions Inid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- 7. In these circumstances, the points for my consideration are:
 - (i) "Whether the demand of the Petitioner in Wait List No. 513 for restoring the wait list of temporary messengers in the Respondent/

Bank and consequential appointment thereupon as temporary messenger is instiffed?"

(ii) "To what relief the Petitioner is entitled?"

Point No. 1

- 8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years. the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hustically entered into a sertlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank. and has been marked as Ex. Ml. The Petitioner in this case. and the Petitioners in the connected cases attacked this sentement as it is not binding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- 9. On behalf of the Positioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars. issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exoceding 200 days, hence the question of Peritioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of

the LD. Act and it is preposterous to contend that the Petitioner has no valid and coforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retreached messengers and are eligible to be reinstated. Learned representative for the Peritioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Apt providing for retrenchment is not enacted only for the hoteful of the workmen to whom Section 25P applies but for all cases of retrenchment. Therefore, the application of Section 2511 cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bunk that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex, W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular idstructions of the Respondent/Bank issued from time to time in connection with the implementation of the extlements on absorption and which are statutory in chail. Firther, a combined study of Ex.Mt and the averments of MWI and MWI and their testimonies during the cross-oxamination will eleatly show how the bank has given a raw deal to the Petitioner from the beginning linking has future with the sittlements. Further, Clause 1 of Ex. MTdeals with categorization of retrenched temporary ent, loyers into A. B and C., but this categorization of A, $3 \& C \sim 4 and a physical to the doctrine of flast come - first$ $_{2}$ = 66 figs (ye) me — last 80 and therefore, the categorization in Clause a is illeget. Clause it (a) of Ex.Mit provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of measongers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories. of tempostry employees is not valid. Further, engaging casuals to the messengerial work is in contravention of the guidelines mentioned in Reference Book or: Staff matters, copy of which is marked as Ex.W8. Parther, the appointment of daily wage basis for regular messengerial jobs etc. are Strictly prohibits I as per bank's circulars/instructions. In such direntastantes, the absorption of casuals along with the eligible categories sanot valid. Pieresons, these persons who were lengaged by the Respondent/Bank on casual buris should not be given peamenent appointment in the hank service. Thuse casuals were given more beneficial Beatment in the in Her of arr. ving at qualifying service for interview and selection. But temporary employees have not been informed shout this amendment which includes casuals affecting their interest and chance. Further, as per instructions in $\mathbf{E} \in \mathcal{W}(2)$ our types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared unity one wait list for each modul; as per Ex.M 10 in this case. Those condidates under $E_{\rm A}/M10$ were found suitable for appointment us mes engers and sweepers. Even MW 1 is unable to say as to wisen the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17:11-87, 27:10-88 and 9-1-91 which are marked as Ex. 41. M3 and M4

respectively. Bur, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2.5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class TV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 sentement and 1988 sentement since they formed two distinct and separate classes and they cannot neat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comparises of both messengerial and nonmessengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industry wise sentement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity. with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released / published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bunk to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates dute of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madors: and only during the year 2003 the Respondent/Basic produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is

further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (no) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/ Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastay Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC BUT HED SINGHAS RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is ittegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense. since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Fix. M IO which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a condidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of sendement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Fx. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any retevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner, Further, though the Respondent/ Management has examined two witnesses, the deposition

of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/ Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as anshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected LDs have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have acqually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II ILLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days. only when the workmen worked with hammer, sickle or pan but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the hank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault. of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the

Petitioners are estopped from making claim as they had. accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/ Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Forther, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/ Bank was engaging temporary employees due to business. exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation than he workelf as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the ferteration were borafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait fisted and therefore, the Petitioner is estupped from questioning the settlement directly of indirectly and his claim is tiable to be rejected. Furthermore, the said settlements were not questioned by any umori and the settlements were hank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 III J 323 ASSOCIATED CLASS INDUSTRIES LTD. <u>Vs.</u> INDUSTRIAL TRIBUNAU A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of [1] workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Fradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, musrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLF 1189 ASHOK AND OTHERS Vs. MAHARASITRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation afficer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of main fuler, from as even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is ensuled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLU 308 $K_{\rm c}$ C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Coun has held that "settlements are divided

into two categories namely (i) those prrived at outside the conciliation proceedings under section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under section 18(3). A settlement of the first category has lemited application and hinds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen a tro." He further relied on the rulings reported in A1R 2000. SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. $V_{\rm K}$ STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "sentement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bong fide in nature or that it has been arrived at on account of froud, misrepresentation or concealment of facts or even corruption and other inducements, is could be subject matter of yet another. industrial dispute which an appropriate Govt, may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Peritinner is also one among them. they have entered into settlement with the hank and therefore, it is bioding on the Petitioner, Further, he argued that no union of the bank has questioned the settlement and in such direumstances, it cannot be said that it is not binding on them and he is estopped from disputing the SOMO.

II. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with wait list. No. given for restoring the wait list of Temporary messengers in the establishment of Respondent/Bank and consequential appointment theretipon as temporary messenger is justified?" The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt, is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not rejectatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Peritiener it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he reflect on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTELAND SHOP WORKERS UNION

Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "more wording of reference is not decisive in the matter of tembility of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide: the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery. again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitionner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, be argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LAB IC 1664 YAN SAGNATHAN ORIENT PAPER MELS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Maditya. Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied (in the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN V2. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court.7 Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment. is valid or not, from the pleadings it is clear that the Peritioners have been retrenched from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13 I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

 Then the learned counsel for the Respondent. contended that since the Petitioner mentioned that be has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he celled on the rolings. resorted in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIDEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff. and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom: persons were removed from the select list and the remaining. selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 19976SCC584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its tener dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion. of their names in the said panel for permanent absorption. in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates." included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no *mala fide* on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as afleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. FIARA SONGH AND OTHERS wherein the Supreme Court has held that "now coming to

the direction(that all those ad-hoc temporary employees) who have obntiqued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year. should be regularised even though (a) no vacancy is: avaitable for him which means creation of a vacancy (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time. of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied opon by the High Court justify such wholesaie. unconditional orders. Moreover, from the mere continuation of an *ad-hoc* employee for one year, it cannot be presumed that there is used for regular post. Such a presumption may be justified only when such continuance. extends to soveral years. Further, there can be on rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees. who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other. relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant. facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impurped. directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders. of lower Courts. He further relied on the decision reported io 1997 (ISCIC | ASHWANI KUMAR AND OTHERS Vs. STATE OF HIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation. or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular magner or on *ad-hoc* basis against an available. vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It Would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned course) for the Respondent contended that these temporary employees were appointed

only due to exigencies and they have not appointed against. any regular vacancy and they have only appointed in leave. vacancies and therefore, they are not entitled to claim any. absorption in the Respondent/Bank, Porther, he relied on the rolings reported in ATR 1997 SCC 3657 HTMANSHLI KUMAR VIDYARTHI & ORS VESTATE OFBIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their threngagement from service cannot he construed to be a retrenehment under the LD. Act. The concept of retremehment therefore, cannot be stretched to such an extent as so cover these employees. Since they are: only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 FLLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of "last come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alloged that his jumines have been made perinanent in banking service, he has not established with any evidence. that his junious were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this. Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even. in recent decision reported in 2006 4 SCC 4 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme. Court has held that merely because a temporary employee. or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain —not at arms length since he might have been searching for some employment so as to eke out. his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got ensployed should be directed to be continued. permanently. By doing so, it will be creating another mode. of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that ""unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDI 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS VS. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore. is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUI ANPUR VS. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme anshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION VS. S.C. PANDEY, wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Covernment in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the sented legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Purther, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allohed to them. Under such circumstances, it cannot be questioned by the Petitioner.

- 17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bong fide in nature or it has been arrived at on account of male fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Peritioners cannot now question the seutements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed. I find the Petitioners current claim for reinstatement or regularisation in services of the Respondent /Bank.
- 18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are emitted for the same relief.
- 19. But, I find since the Sopreme Court has held that temporary employees are not intitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Pethioner is entitled?

- 20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.
 - 21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

	езась (Схало		:	W16	17-03-97	Xerox copy of the Service particulars—		
For t	e Petition	ĖŦ	WW1 Sti R.S. Sivasubrarganiam WW2 Sti V. S. Ekumbaram			J. Velimengan		
For t	he Rekpon	dem	MW1 Sri C. Mariappen	WI7	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pand		
MW2 Sri C. Ramalingam Documenti Marked :—				WIS	31-03-97	Xerox copy of the appointment order (Sri G. Panti		
Ex. N W]	o. Daje ⊪sµss	Xer dai	Description fox copy of the paper publication in ly Thanthi based on Ex. M1.	W19	Feb. 2005	Xerox copy of the pay slip of T. Seka: for the month of February, 2005 wait his No. 395 of Madurai Circle.		
W 2	20 4 88	gui	rox copy of the administrative delines issued by Respondent/Bank implementation of Ex. M1.	W20	13-02-95	Xerox copy of the Maduria Moduli Circular letter about Engaging temporary employees from the panel of wait list.		
W3	24-4-91	Re:	rox copy of the circular of spondent/Bank to all Branches arding absorption of daily wagers in secuger vacancles.	W2I	09-11-92	Xerox copy of the Head Office circulal No. 28 regarding Norms for sanction of messenger staff.		
W4	01-45-91	Xer	ux copy of the adventisement in the	₩ 22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.		
WS W6	20 49-9 1 153-97	Hid ser Xer	ox copy of the advertisement in The du extending Period of qualifying rice to daily wagers. The copy of the circular letter of Zonal	W23	09- 07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part		
	!	Off	ice, Chennai Abont filling up of amoies of messenger posts.	W24	07-02-06	time general attendants. Xerou copy of the local Head Office		
W7	25-\$97	Xer Rev regu	ox copy of the circular of spondent/Bank to all Branches urding identification of messenger			circular about Conversion of part time employees and redesignate them as general attendants.		
W 8	No j	31-3 Xer	ancies And filling them before 1-97. Tox copy of the instruction in erence book on staff about casuals.	W 25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cudre.		
	;		to be engaged at office/branches to	Forth	For the Respondent/Management :-			
W9	30-09-85		nessengerial work.		o. Dule	Description		
,	2016-02	ACT ISSU	ox copy of the service certificate ed by Royapetiah Branch.	MI	17-11-87	Хегох copy of the sentement.		
¥10	01-11-96	Xer	ox copy of the service certificate.	MΩ	16-07-88	Xerox copy of the settlement.		
VII	Nij		ed by Mandaveli Branch.	M3	27-10-88	Xerox copy of the settlement.		
	140	ZHi(ox copy of the administrative lelines in reference book on staff.	M4	09-01-91	Xerox copy of the settlement.		
		mat	ters issued by Respondent/Bank	M5	30-07-96	Xerox copy of the settlement.		
	:	tare	arding recruitment to subordinate & service conditions.	Mó	09-06-95	Xerox copy of the minutes of conciliation proceedings.		
V12	Nil ,	Xen Staf 31-t	ox copy of the Reference book on f matters Vol. III consolidated upto 2-95	M 7	28 05-91	Xerox copy of the order in W.P. $No.787291$.		
V13	06-08-97		nx copy of the call letter from Madural A office For interview of messenger	MB	15-LL5-9R	Xerox cupy of the order in O.P. No. 2787/97 of High Court of Orissa.		
V]4	06-06-97	post	-V. Muralikannan ox copy of the call letter from	M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99		
	•	Mad mes	lurai zonał office For interview of senger postK. Subburaj.	M10	M	Xerox copy of the wait list of Chennal Module.		
V15	06-0 \$-9 7	zans	ex copy of the call letter from Madurai at office for interview of messenger —J. Velmurugan	MH	25-10- 99	Xerox copy of the order passed in CMP No.16289 and 16290999 in W.A. No. 1895/99		

नई दिल्ली, 19 जुलाई, 2007

कर, अर. 2204.—औंओंफ विवाद अधिनियम, 1947 (1947) का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, स्टेट बैंक ऑफ इंग्डिया के प्रबंधतंत्र के संबद्ध वियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औरओंफ विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/त्रम न्यायालय, चेत्रई के पंचाट (संदर्भ संख्या 233/2004) को एकाशित करती है, जो केन्द्रीय सरकार को 19-7-2007 को प्रान्त हुआ था।

[सं. एल-12012/431/98-आईआर(बी-1)] अनय कमार, 'डेस्क अधिकारी

New Delhi, the 19th July, 2007

S.O. 2204. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 233/2004) of the Central Government, Industrial Tribunal-cambabour Court, Chennal as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19-7-2007.

[No.T.-12012/431/98-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

REFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

> Wednesday, the 31st January, 2007 PRESENT:

Shri K. JAYARAMAN, Presiding Officer Industrial Dispute No. 233/2004

(Principal Labour Court CGID No. 152/99)

(In he matter of the dispute for adjudiation under clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen).

BETWEEN

Srt. L. Babu

: I Party/Petitioner

AND

The Assistant General Manager, : If Party/Management State Bank of India, Z. O. Chennai.

APPEARANCE

For the Petitioner

: Sri V.S. Ekambaram. Authorised Representative

For the Management

 M/s. K. S. Sundar, Advocates

AWARD

 The Central Government Ministry of Labour, vide Order No. 1-12012/431/98-IR (B-1) dated 10-2-1999 bas referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 152/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT Cum Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D.No. 233/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri L. Baha, wait list No. 431 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periamet branch from 6-8-1984. The Petitioner was urally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section [8(1) reached between management of State Bank. of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV. temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submined his application in the prescribed format through Branch Manager of the Perjamet branch. He was called for an interview by a Committee appointed by Respondent/ Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initialty worked as a class IV employee. From 6-8-1984, the Petitioner has been working as a temporary messenger. and sometimes performing work in other branches also. While working on temporary basis in Avadi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-1997 that his services are not required any more and he need not attend the office from

1-4-1997. Hence, the Petitioner raised a dispute with regard. to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Government to reconsider the reference and the Pecitioner. requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-1997 and to regularise-him in service in due course. The Respondent/ Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Peritioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him. after interview do not ment consideration. The Perisioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the semicments are represent to Section 28G & 25H of the 1.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the semigment. speaks about three categories only a single wait list has Neon prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions. regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of recevant grovisions of circular. The Respondent/Bank. engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work mater. assumed name or by both which amounts to unfair labour. practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Sence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statementialleged that reference made by the Government. for adjudication by this Tribunal itself is not maintainable. The Peritibles was not in continuous service. Hence, the question of regular appointment absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 19: Francis (3) of LD. Act in lieu of provisions of iow, retreachment and implemented by Respondent/Bank. The about of the Petitioner is not being fide and made with «Iterior moneye. The Politioner concealed the material facts." that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in sensority. Due to the business exigency, the Respondenty. Bank engaged the temporary employees for performance. of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and

when their case was espoused by State Bank of India Staff. Federation which resulted in five settlements dated 17-11-1987, 16:07, 1968, 07:10, 1988, 9-1-1991, and 30-7-1996. The said settlements became subject matter of conciliation. proceedings and minutes were drawn under Section 18(3). of LD. Act. In terms thereof, the Petitioner was considered. for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No.431 in wait list of Zonal Office, Cheman, So far 357 wait listed temporary. candidates, out of 744 wait listed temporary employees. were permanently appointed by Respondent/Bank, It is false to allege that the Petitioner worked as a temporary. messenger. The Petitioner was engaged only as leavevacancies as and when it arose. When the Petitioner having submitted to selection process in terms of sentements drawn as per retrenchment provisions referred to above. cannot ruto around and claim appointment. Such of those temporary employees who were appointed were engaged. for more comber of days and hence, they were appointed. Under the settlement, employees were eategorised as A, B. and C. Considering their temporary service and subject to other eligibility contenia under cutegory (A) the temporary employees who were engaged for 34H days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temperary service in any continuous block of 36 calendar. months and under caregory (G) (the temporary employees) who have completed 30 days aggregate temporary service. in any calendar year after 1-7-75 or mimmum 70 days. aggregate temporary service in any continuous block of 36. calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait had and it was also agreed that went list. was to lapse in December, 1991 and the cut off date was extended up to 31-3-1997 for filling up vacancies which were to arise upto 33-12-1994. The Petitinner has no value and enforceable right for apprintment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the afteresaid temporary. employees were working in leave vacancies and not unregular permanent vacancies. In terms of aforesaid settlements, out of 744 wait hated candidates, 357 temporary. employees were appointed and since the Petitioner was wait listed at 431 he was not appointed. The said seulements. were bonz fide which were the only workable solution and is binding on the Peutioner. The Petitioner is estopped. from questioning the semiennents directly or indirectly and his claim is hable to be rejected. Further, the said settlements. were not questioned by any union so far and the settlements. of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. 1981. does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say fast decornents and identity of Petitioner was verified. before the Petitioner was engaged. It is also not correct to

say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/ casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Peritioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

- In the additional claim statement, the Petitioner. contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV. post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously. with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services. of the Peritioner as he has acquired the valuable right. enshrined in the Constitution of India. In the year 1998, the Respondent/Rank has issued a circular to the effect that under no circumstances, wait listed persons like the Politioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future. employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait. listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Pentioner prays that an award may > passed in his favour.
- 6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under section 18(1) of the Act and not under section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.
- In these circumstances, the points for my consideration are;
 - (i) "Whether the demand of the Petitioner in Wait List No. 431 for restoring the wait list of temporary messengers in the Respondent/ Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"Point No. 1:
- In this case, on behalf of the Petitioner it is: contended that the Petitioner in this case and the Petitioners. in the connected industrial disputes have been sponsored. by Employment Exchange and they having been called for interview and having been selected and wait listed in terms. of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Count. to protect the legal and constitutional rights of the workmen. concerned and while the matter was pending in Writ Petition. No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. Ml. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not hinding on them on the ground that they have been interviewed and selected in the permanent. vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.
- On hehalf of the Petitioner, it is contended that: these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case. the Petitioner is not bound by settlement under section. 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and coforceable right for appointment, in the wake of strict. instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service. exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the LD. Act and it is proposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 250 and 25H are very much applicable to the Petitioners who are retrenched messengers.

and are eligible to be reinstated. Learned representative for the Petitioner, contended that in 1996 LAB & IC 2248 CENTRAL HANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the LD. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies. but for all cases of retrenchment. Therefore, the application of Section 25]4 cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character, Further, a combined study of Ex.Mi and the averments of MWI and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M! deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last comefirst go' or first come- last go' and therefore, the categorization in Clause 1 is illegal. Clause 1 (a) of Ex. M1 provides an apportunity to persons who were engaged on cusual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Stat marters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the oligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving as qualifying service for interview and selection. But, temporary chiployees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondents' Bunk has alleged to have prepared only one wait list for each moduld as per Bx. M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as F4. MI, M3 and M4 respectively. But, when MW1 has spoked about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-

inclusion except his bald statement. Further, according to MW1 wait list under Ex M10 was prepared on 2-5-92 but there is no pleading in the Counter Stutement with regard to this wait list. Forther the Hon'ble High Court has held in its order dated 23-7-99 in W.P No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temperary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances. as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 senlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India 1 Further, the averagent of MWI and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on hehalf of the Petitioner that as per deposition of MW I wait list under Ex.M10 comparises of both messengerial and non-messengerial candidates .While the temporary employees were appointed after due process of selection and were paid wages on the hasis of industry wise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same cours to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India, Therefore, the Petitioner contended that preparation of Ex. M.1. namely wait list is not inconformity with the instructions of Ex. M2 and nonpreparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under $E \times$ M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennal and Madural and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Responden/Bank has alleged that these petitioners were engaged in leave variancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the scittlement on absorption of temporary employees.

the expression that they were engaged in feave vacancy was used as a device to take them out of the principal clause 2 (on) of the LD. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Pattikener has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 19884-8000 201 H.O. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held thus "to employ workmen as "badlies" cuspals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent, workmen is illegal " Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with tongest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also had in law. Thus the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in other suctation and in breach of it. Though clause 2(c) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/ fullus vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have relused it and the name shall stand deleted from the respective panel and he shall have on further claim for being considered for permanent appointment in the hank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till dare, it is a mustery as to who that senior was and there is no documentary evidence in support of the averment and also for the averagent of MW 1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/ Bank is arbitrary, mala tide and illegal and the Respondence Bank has not acted in accordance with the terms of \sim thement on absorption of numbers γ employees. Though the Responsient/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 7-6-75 before Regional Labour Commissioner (Central), Hydesabud, it is neither a 18(3) settlement nor 12(3)semlance trass lainted by the **Respondent/Bank** which says. only with regard to modification of Ex. MI to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No.11932/91 in W.P. No.7872/91 ceased to have any refevance when the main writ has been disposed. of in the year 1999 and therefore, they do not have any bearing in the case of the Petirioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no opismal knowledge about the settlements which are marked 45 EA, M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme. In the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Barik has no application to the Peritioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months. as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retreachment from service is illegal and against the mandatory provisions of Section 25. and therefore, they are deemed to be in continuous service. of the Respondent/Rank and they are entitled to the benefits under the provisions of LD. Act. It is further contended on behalf of the Pecitioner that though some of the Pecitioners. in the connected LD, have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLI 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vo. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression factually worked under the employer' connut mean that those days only when the workmen worked with hammer, sickle or penbut must accessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by computsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondenc/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the hank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment us sub-staff in early 1980s but were denied turther engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream They have also not gainfully employed. In such circumstances, this Trigonal has to pass an award in their favour.

10) But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are exapped from making claim as they had accepted the seulements drawn under the provisions of Section 18(1) and 18(3) of the 1.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with uttercommotive Porther, they have concealed

the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent-Bank was engaging temporary employees due to business exaggator for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The conferment entered into by the Respondent/Bank and the Federation were honafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settleracid and accordingly he was wait listed and therefore. the Palitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. [Antibetimore, the said settlements were not executioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulines reported in 1991 TLLJ 323 ASSOCIATILD GLASS. INDUSTRUST. ID. Vs. INDUSTRIAL TRIBUN M. A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workman and the workspectresigned from the journal received terminal benefits, but the workmen raised a plea before the Tribanal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that I in the absence of plea that the settlement reached in the course of conditiation is vitiated by frame. mistepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLU 1139 ASHOK AND OTHERS Vs. MAHARASHURA STATE TRANSFORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held but higher-friend a scattlement armived at in the course of the conditionion proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of commacts, the object obviously is to uphold the sanctify of settlements reached with the active assistance of the emiliëliarien officer and to discourage an individual employee or a minority union from southleg the septement ${\mathbb C}$ In further held that "there may be exceptional cases, where page may be allegations of mula tides, Italia of even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective hargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rations reported in 1997 I LLS 308 K.C.P. LTD, Vs. PREMIDING OF ICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18:35 of the LD. Act and (ii) piese aprived at in the course of correliation proved \$1085. under Section (879). A sentiement of the first entegory liss Tipgged application and binds merely parties to at auto-न्द्रभ स्काल I of the second category made with a recognised mail of system to have extended application as the all by blicking

on all workmen of the establishment. Even in case of the first estegory, if the kertlement was reached with a representative orange of which the contesting work men were: members and if there was nothing unreasonable or enfair in the terms of the sentement, it must be bloding on the comesting workmen also. The further seized on the calangs recorded in ATR 2000 SC 469 NA/BONAL ENGINETARING INDUSTRIES LTD. VA STATE OF RAJASTHAN AND O'THERS wherem the Supreme Court has held that fisculement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not boundide to nature or that it has been arrived at on account of traudmisropresentation or configuratment of facts of even corruption and other moncements, it could be subject matter of yor another industrial dispute which an appropriate Gove. play refer for adjudication after examining the allogations as there is an underlying assumption that the settlement reached with the help of the concibation officer must be tair and reasonable "Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the sentement, since the Egderation in which the Pentimor is also one among them. they have entered into scall-ment with the bank and therefore, it is banding on the Peritamer, Further, to suggest that are entire of the bank has questioned the settlement and misuting represences, it cannot be said that it is not binding on them and he is estopped from disputing the

11. Learned coursel for the Respondent further contended that though the reference made in this case and other connected disputes is "whether the demand of the workman with worthst No given for restoring the wait list on temporary messengers in the establishment of Respondent/Bank and consequential appointment thereugon as temporary messenger is justified? The Petinoner contended that the retreatchment made by the Respondent Bank is not collid and be has to be n instared in service with full back wages to Hande, the Petitioner's content on against the reference made by the foest is not velid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner's and not reinstatement as alleged by the Petitioner in the Court Statement as alleged by the

12. But as against this on behalf of the Pentioner it is contended that mete wording of reference is not decisive in the matter of tenomity of a reference and the relief on the ratings reported in 1998 ILAB IC 345 SPORFIARY. KOHLAM BILLA (JOTEL AND SHOPWORKERS) NON Vs. INDESTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held from thore wording of reference is not decisive in the matter of tenability of a reference, Lyen though the Tribunal cannot go beyond the order of reference are discernible from the material before it, it has only on dary and that is to decide the points on meths and not to find our some securion defects in the wording of reference, subjecting the points

workman to hardship involved in moving the machinery again." It further held that "the Tribugal should look intothe pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead. of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service. or not for which he relied on the rulings reported in 1998. LABIC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS., wherein the Madhya. Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507. A. SAMBANTHAN, V., PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "It has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manger, but should consider the order of reference in a fair and reasonable manner." He also argued. that in Express Newspapers P. Ltd.'s case reported in AIR. 1993 SC 569 the Suprema Court has held that "the Tribunal" has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, u should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment. is valid or not, from the pleadings it is clear that the Politioners have been retreached from the Respondent/ Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as altered. by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank. I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Peritioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the ratings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V.VIJEESH wherein the Supreme Court has

held that "the only question which falls for determination." in this appeal is whether a candidate whose name appears. in the select list on the basis of competitive examination. acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made. in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number. of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has beld that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent. appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion. that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and, therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings. reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in mark list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question. the wait list and since there is no male fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mals fide. motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB [C 2168 STATE OF HARYANA AND ORS. V1. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming tothe direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temparary employee who has been continued for one year. should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he

appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time. of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems iddicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale. unconditional orders. Moreover, from the merecontinuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow prespective of and without taking into account the other reservant circumstances and considerations. The relief must be moulded in each case baying regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsuetainable. Thus, the Supreme Court set aside the orders of lower Churts. He further relied on the decision reported in 1997 ITSCC I ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench. of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employeds whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on an hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itsetf is unanthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such almon-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstainces, there was no occasion to regularise them. or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a mullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS VE STATE OF BIHAR AND ORS, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot he consumed to be a retrenchment under the I.D. Act. The

concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts. their disengagement is not arbitrary." He further relied on the ratings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the LD. Act retrenchment procedure following principle of "tast come-first go" is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retreaching seniors and retaining juniors. Though in this case, the Peritioner has alleged that his junious have been made permanent in hanking service, he has not established with any evidence that his juniors were made permanent by the Respondent/ Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY. STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad how employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts un engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to hargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whalever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpentate illegalities and to take the view that a person who has temporarily or easually got employed should be directed to be continued permapently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant. rules and after a proper competition among qualified persons, the same would not confer any right on the appointee...... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance. If the original appointment was not made by following a due.

process of selection as covisaged by relevant rules. Further, in CDJ 2006 SC 443 National Pertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a mullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Ve Surinder Kumar, the Supreme Count has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post, Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme ensbrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only hecause an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also beld that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privarisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by scalements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner

17. I find much force in the contention of the learned counse! for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait fist and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was

not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the Changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Covernment in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work. I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007)

K. JAYARAMAN, Presiding Officer

Witnesses Extended:

For the Petitioner

WW1 Sri L. Babu

WW2 Sri V. S. Ekamberam

For the Respondent :

MW! Sri C. Mariappan

MW2 Sri C. Ramalingum

Documents Marked:

Ex. No. Date

Description

WI 1-8-88

Xerox copy of the paper publication in

daily Thanthi based on Ex. M1.

120			THE GAZETTE OF INDIA: AUGUST 4				Xerox copy of the Service particulars—		
 V2	204	P8 7	Xerox copy of the administrative guidelines issued by Respondent/Bank	W18	<u>17-3-</u> 1		J. Vejmirugan.		
	i		for implementation of Ex. Mts.	W19	26-3-		Xerox copy of the letter advising selection of part time Menial—G. Pandi.		
N 3	24-4		Kerox copy of the circular of Respondent/Bunk to all Branches	W20	31/3	47 7	Xerox copy of the appointment order to Sri G. Pandi.		
	i	i	regarding absorption of daily wagers in Messenger vacancies.	W2i	Feb.	2005	Xerox copy of the pay ship of T. Sekar for the month of February, 2005 wait list		
N 4	1-5 (þι	Xerux copy of the advertisement in The Hindu on daily wages hased on Ex. W4.		13-2	. 05	No.395 of Madurai Circle. Versas conv. of the Maduria Module.		
W 5	20-1	1 -91	Xerox copy of the advertisement in The Hindu extending Period of qualifying	W22	13-2	5-501	Circular letter shoul Engaging temporary employees from the panel of wait list.		
W6	15-	: : :3-97	service to daily wagers. Veron comparished in the circular letter of Zonal	W23	ÿ-1	1-92	Xerox copy of the Head Office circulat No. 28 regarding Norms for sanction of		
	·	:	Office, Chemiai About filling up of vacancies of messenger posts.	₩24	9-7	-92	messenger staff. Xerox copy of the minutes of the Bipartite		
W7	29	i3-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W 25	9-7	1.92	meeting. Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms-creation of part		
₩8	N	I	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W26	i 7-	2.06	time general attendants. Xerox copy of the local Head Office openius about Conversion of part time employees and cedesignate them as		
W9	21	D 11-93	assued by Periamet Branch.	W2'	7 3	1, 12-8	general attendants. S Xerox copy of the local flead Office		
W!	.o 2	յլ (1-93	issued by Avadi branch.				ciccular about Appointment of temperary employees in subordinate cadie.		
W) [2	£5-!-05	Xerox copy of the letter from Petitioner	.2	For the Respondent/Management :				
	i	i	to Respondent/Management for service certificate.		Ex. No. Da		_{tie} Description		
W	12 İ	ŅŲ	Xerox copy of the postal acknowledgement.	¹ мі м ²		7 H-8 16-7-8	2.2		
	_		Xerox copy of the administrative			7- (U-)	e de la compansa del compansa de la compansa del compansa de la co		
W		M)	modelines in reference book tot star		_	ور و	Para a saud sessent		
			matters issued by Respondent main	Α.		30-7-9	r a		
			regarding appointment of temporary employees.	Μ		961	95 Xerox copy of the minutes of conciliation proceedings.		
¥	V14	Nil	Xerox copy of the Reference book of Staff maters Vol. III consolidated upt	ei D M	7	28-5-	No.7872/91.		
٧	W15	6 3-97	gonal office for interview of meswinger post V. Moralikannan.	ai M er	[8	15-5-	$_{ m No.~2787/97~e}$ (High Court of Otissa.		
				M	1 9	Jn-7	io SLP No. 30829 9 .		
١	₩16 ±	6-3-9	Xerox copy of the call letter fro Madurui zonal office For interview messenger post—K. Subburaj	or y	410		NE Xerox copy of the wait list of Chenn Module.		
•	W17	6-3-9 :	en a antique de Germ Martin		411	25-10	0.99 Xerox copy of the order passed in CN No.16289 and 16290/99 in W No.1893/99.		

नई दिल्ली, 24 जुलाई, 2007

का. 31. 2205.— अध्योगिक विवाद अधिनेश्वम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एरोनॉटिकल कम्यूनिकेशन स्टेशन के प्रचंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्देश्व औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/क्षम न्यायालय नं-1 चण्डीगढ़ के पंचाट (संदर्भ संख्या आई.डी.सं. 73/98) को प्रकाशित करती है, जो केन्द्रीय अरकार को 24-07-2007 को प्राप्त हुआ था।

[सं. प्ल-11012/12/97-आई आर (एम)] एन. एस. मोरा, डेस्क अधिकारी

New Delhi, the 24th July, 2007

S.O. 2205.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1, D. 73/98) of the Central Government Industrial Tribunal-cum-Lahour Court, No. I, Chandigarh as shown in the America in the Industrial Dispute between the employers in relation to the management of Aeronautical Communication Station, Nuh, Gurgaon, and their workmen, which was received by the Central Government on 24-07-2007.

[No. L-11012/12/97-IR (M)] N. S. BORA, Desk Officer

ANNEXURE

BEFORE SHRI RAJESH KUMAR, PRESIDENG OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1, CHANDIGARH

Case No. I. D. 73/98

Shri takshmi Chand S/o Sh, Ram Parshad, R/o Village and Post Office Maheshpur, THE, Palwal, Distr. Faridabad.

... Applicant

Versus

The Officer Incharge, Aeronantical Communication Station, Nuh, Distr., Gurgaon Haryam-122001

... Respondent

APPEARANCES

For the workman

Shri D.R. Sharma

For the management

Shri Jagdish Manchanda

: S. AWARD

Passed on 4-7-2007

Central Government wide notification No. L-11012/ 12/97-IR (Misc.) dated 18-3-98 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Aeronautical Communication Station, Nuh, Airport Authority of India, in terminating the services of shri Lakshmi Chand, Casnal Labour w.e.f. 1-9-1996 is legal and justified? If not, to what relief the workman is entitled to?"

- It is submitted in the claim statement by the workman that he was working with the management since 4-9-92 as Chowkidar as daily wage basis at Transmitter Centre Aeronautical Communication Station, Nob., Diatt. Gurgaon and his work and conduct is satisfactory. That the management on 1-9-1996 terminated his services without assigning any reason. That the workman was appointed on a temporary post and has completed more than 240 days in a calendar year. Therefore, the above termination is illegal unwarranted, unconstitutional, malafide, arbitrary and against the provision of law and also against the principle of natural justice as no notice, no charge sheet or enquiry was held, some junior to the workman are still working and the management have not adopted the procedure of last cum first. Therefore, the management has contravened the provisions of Section 25-G, H and F of the I.D. Act. The management also withheld the wages of workman for the period 20-7-1996 to 31-8-96. The workman approached the ALC Robtak for the conciliation proceedings and the management has given the detail of the workman before the ALC for the period September 92. to December 1993 in which it clearly shows that the workman has worked for more than 240 days. The workman orayed for setting aside the termination order and for reinstatement of the workman for full back wages all consequential benefits.
- In the written statement management in preliminary objection submitted that claim statement is not maintainable as the workman was engaged as casual labour in tieu of Ramphai and Jagdish who were proceeded on leave and workman was engaged on leave vacancy. It was made clear to the workman that they have been engaged as casual labourer w.e.f, 4-9-92 with clear cut instructions till these two Chowkidars reports for duty, therefore, there is no case for the alleged workman with full backwages . It is also submitted that workman who was appointed as casual. tabourer and his services were dispensed with in the month. of November 1992, he attended the office for 29 days and was paid the wages of Rs. 1015. Dishonestly and eleverly the workman has tempered the attendance register and written his own name over the name of Raiesh Kumar who had actually performed the duties of casual labourer. The workman was again engaged as casual labourer in Dec. 1992 and performed his duties as casual labourer till. December 1993. The said Jagdish Chand Chowkidar. reported for duty on 30-9-92 and Ram Phal on 3-10-1992. The workman has not completed 240 days therefore, the management has not complied with provisions of the J.D. Act 1947 as he was appointed against the leave vacancy and as and when the person reported back on duty, the workman was not entitled to continue on the same post. It is also submitted that the reference has been raised by the workman after a gape of more than 4 years. On merits also, it is submitted that workman was engaged as chowkidar in leave vacancy and his work and conduct was not satisfactory. The appointment letter elearly stipulates that the engagement was made till two Chowkidars reported

back for duty and as regular Chowkidars reported back for duty on 30-9-92 and 3-10-1992, his services have been terminated, the workman was never employed by the management w.c.f. 1-4-1994 to 18-12-1994, therefore, there is no question of termination of his services, the workman was paid wages for the actual days be worked with the management.

- Rejoinder also filed by the workman reiterating the claim made in the claim statement.
- 5. In evidence the workman filed his own affidavit in evidence and also appeared as his own witness as WW1. On the other hand the management filed in evidence one affidavit of A.S. Yadav Officer-in-charge, Airport Authority, National Airport Chandigarh who also appeared as MW1 in evidence on behalf of the management. Both witnesses of the workman and the management cross-examined at length by the counsel for the parties.
- 6. Workman filed written arguments. On the other hand the management did not file written arguments, rather requested that the case may be decided on the basis of written statement and affidavit of the management and on other record.
- In written arguments it is submitted by the workman that the was engaged as Chowkidar on 4-9-92 and continued working till 31-8-1996 when his services were terminated without making compliance with the provisions of Section 25F of the I.D. Act 1947; that he had completed more than 240 days in 1993, 1994 and 1995 and also 240 days preceding to the date of termination i.c. 31-8-1996, that the management (ailed to produce the relevant record despite repeated opportunities to the management and the management in order to frustrate the claim of the workman leveled the allegation of tempering the official record though no action has been taken by the management and no FIR was lodged. That in reply before the ALC the management admitted of having completed 240 days by the workman. That the management tried to show the workman under the contractor from Ian. 1994 to 31-8-1996, that no agreement or contract was produced by the management. Ex. W9 the documents of the management shows that workman worked from Feb. to July 1996 and Ex.W10 shows that workman was appointed on 8:10-1992 w.e.f. 4-9-92 and RT also shows that he performed his duty from March 1996 to 30-8-96 and the existence of the documents dever questioned by the management; rather it is admitted that the signatory of the affidavit is not aware whether the workman was engaged as lubour contractor baving valid license and it is further admitted by the management that whenever a contractor is engaged for any work an agreement is executed and the witness of the management has shown his unawareness about executing of agreement with the workman. It is further submitted that the workman never tempered with the record as he is illiterate. The AR of the workman also placed reliance on the cases of 1999(2) SLR 01, AIR 1997 S.C. and a judgment of CAT reported in 2002(3) ATJ 441. In this case learned counsel for the management did not file written arguments

and had only relied upon his written statement, affidavit, mall evidence and judgments of the Hon'ble Supreme Court. As per schedule this court has to adjudicate upon the issue whether the action of the management of Aeronauteal Communication Station. Nuh. Airport Authority of India, in terminating the services of Shri Lakshmi Chand, Casual Labour w.e.f. 1-9-1996 is legal and justified? If not, to what relief the workman is entitled to?

 I have found that as per reference received for adjudication both the parties are disputing the date of termination. The management has denied that workman worked as a casual followerer wielf. 31-8-96 and axion 1-9-96 his services were terminated. Contentions of the management in their written statement and in comments also filed before the ALCO during the conciliation proceedings are that workman was engaged, as a casual labour to perform the duty of a. Chrywkidar in leave vacancy and worked w.c.s. 4-9-92 to 18-12-1993 as detailed in written statement as well as in comments filed before the ALCO. Document Ex. M 2 proves approval of engaging on leave vacancy. The contentions of the workman are that he worked w.e.f. 4-9-92 to 31-8-96 and his services were terminated without assigning any reason on 1-9-96. The workman has also taken a plea that workman has completed 240 days in a calendar year and this fact has been admitted by the management in written statement I comments filed before the ALCO. On perusal of the comments I found that management has no where admitted that workman has completed 240 days in a calendar year or preceding to the date of termination, rather in the comments filed before the ALCO and written statement before this court, it is submitted by the masagement that Lakshmi Chand remain engaged as casual labour at ACS Nath against leave vacancy of regular Chowkidar all ! 8-12-1993 and thereafter M/s. Lakshmi Chand Labour contractor Maheshpor (Palwal) was engaged on contract basis to provide watch and ward to ACS. Note from January 1994 till the contract was dispensed with effect from 31-8-96. He was never employed temporarily by the Deptt, w.e f 174-92 to 18-12 93, thus question of termination does not arise and management has given the detail of working days in written statement as well as in comments. The management has taken a plea that workman has tempered with the attendance register to increase his attendance. Though the management did not filed original acquaintance Rolls and workman has filed photo copies of those acquaintance rolls management Ex.W1- W. 8 wherein I have found over writing of workman on some others name on very linst page of Sr. No. 7 name of a workman Rajesh Kumar had been written. It was struck out and Laxmi Chand is written and thus appear clearly with naked eye. Similar is the situation on page 2 and 3. On page 4 name of 1 axmi Chand worksnan is written in different hand which also show that some other name below was removed. Similar is the situation on page 5, 6 and March 93 show the name of the workman Lakshmi Chand at St. No.4 showing 29 days working and it is correct and this page appears to be genuine.

- 9. Workman has not given any explanation how his name appearing over the name of Rajesh Kumar at several pages and these documents attendance record may be photo copies is being produced by the workman on the record himself.
- 10. Further workman has taken a stand that throughout up to date of the termination he worked as casual worker whereas contention of the management are that workman worked thereafter as a contractor. He was given contract and he also deposited the security and also received on termination of contract his security that I have also seen the document Ex. M2 is a letter dated 8-10-92 addressed to Nuh Airport Authorities regarding engagement of two casual labourer in absence of chowkidar in ACS Nuh and Ex. M3 in the copy of application wherein workman requested to refund of his security money of Ex. 3840 which was refunded to him. In the evidence of the workman it has also come that Air Port Nuh is not in existence now.
- 11. Learned council for the workman submitted that as proved and also has admitted by the management that workman completed 240 days and management terminated his services without complying with the provisions of Section 25-F, his termination is word ab-nino w.e.f. 1-9-96 and workman should be reinstated with full beck wages. On the other hand contention of the management are that workman was never appointed on temporary basis, he was simply engaged on leave vacancy which run upto 18-12-93 and thereafter he worked as a contractor by a contract which was executed and he has also not denied but his contentions are that workman was not a valid licensees and transaction is a sharp transaction., Management has relied JT 2005 (11) Supreme Court DGM Oil and Natural Gas Corporation Ltd, Vs. Has Abdul Rehman wherein it has been held that no, of days worked put in broken period. can not be taken as continues employment for the purpose of Section 25-F. In Himmshu Kumar Vidyarthi Vs. State of Sihar the Hou'ble Supreme Court has held that where petitioner was not appointed in accordance with the statutory Rules but were engaged on the basis of need of work on daily wages there disengagement from service not a retrenchment under I.D. Act. Since they are only daily wage employees baving no right to post, their discogagement can not be held arbitrary. In menagez R.B.I. Bangalore Vs. S.Mani JT 2005 (3) 248 it is held that non regularization of service of respondents for alleged misconduct of producing false certificate in criminal proceedings court however acquitting the respondents giving the benefit of doubt, request of respondent for reemployment turned down is correct. Management also refired on the constitutional bench case of Hon'ble Supreme Court in Uma Devi Vs. State of Kamataka. On the other hand workman has referred to 1999(2) SLR contact labour employed for maintenance work, the maintenance work can not by any stretch be ascribed to be of seasonal nature. In AIR 1997 Supreme Court 645 Air India Statutory Corporation Vs. United Labour Union it is held that Ast is

- a social welfare measure, interpretation, shift of judicial orientation must be from private law to public law interpretation. Workman also relied on a CAT judgment that applicants were appointed as sweepers on daily wage basis, thereafter department changed their nature of employment and treating them as casual labourers, claim regularization and regular pay scale of group D employee allowed.
- 12. In view of the shove judgments referred by both the parties, I have found that in the case of the judgment of $\ \ ,$ the Hon'ble Supreme Court in Himanshu Kumar Vidyarthi and Uma Devi Vs. State of Karnataka decided by a constitutional Bench of the Hon'ble Supreme Copurt it is now held that appointment made on the basis of need of work, terroination of their services can not be construed as retreachment. The petitioner were not appointed in accordance with the rules but were engaged on the basis of need of work, on daily wages, their disengagement from service held not retreachment under the I.D. Act as they have no right to the above post. Similarly more strong view was taken by the Hon'ble Supreme Court in Constitutional Bench case in Uma Devi Vs. State of Kamataka against irregular, stop gap atrangement where statutory rules were not followed instead some other methods were adopted in making appointments temporarily, workman so appointed have no right to post. I have also found that workman also made it clear that there is no existence of Nun Airport and it appears to be disbanded and not functional and that management by evidence of Ex. M2 has proved that there was a leave variancy for casual. engagement and on that leave vacancy proved on record workman was engaged in the beginning as a casual labourer and thereafter engagement made as a contractor without verifying that he is without license for a long periods which is illegal act at the part of Nuh Airport authorities. It is further established that Nuh Airport is no more in existence. It has come in evidence that at several places in the attendance register the name of the workman is written after striking out the name of other workman and there is so explanation from the side of the workman. If this illegal tempering with the attendance of several year is kept in mind, he has not completed even 240 days in any calendar year. Further the case of the management is that workman was engaged as casual labourer w.e.f. 4-9-92 with clear cut instructions that he is appointed till chowkidar who were on leave return back and when regular chowkidar returned his services were dispensed with. The management proved that workman worked upto December 1993 as well thereafter and there is tempering with the record by him as his name is written after striking out the name of one Rajeah Kumar in several months and workman is relying that attendance alleged to existed due to alleged tempering. No FIR lodged taking a lenient view does not make the act legal, and clearly without this period workman did not say that he worked for 240 days. In the circumstance he also not disprove the contentions of the management that he worked after the period as submitted by the management as a

contractor labour taking contract himself depositing the security and when contract is over withdrawing that security amount. Here workman desires that his omissions & mistakes should be forgotten & Management same mistakes be taken seriously. In the circumstance, I am of the considered view that management has proved that workman was engaged as a casual labourer in leave vacancy and worked up to December 1993 and thereafter he worked as a contractor and this simulation is created by the faults & bad contentions of both parties and therefore, there is no question of termination of his services as on 1-9-1996 as thereafter contract was over and he also withdrew his security deposit.

13. Further I am of the considered view that workman has failed to prove that the action of the management of Aeronautical Communication Station, Nult. Airport Authority of India, in terminating the services of Shri Lakshthi Chand, Casual Babour w.c.f. 1-9-1996 is illegal and unjustified, management has denied having passed any such under and as per their record his termination is much prior in December 1993. There is no violation in termination on 1-9-1996 of the services of workmun of Section 24-G, H & F of LD, Act, Therefore, I am of the considered view that management proved that termination was just & legal as contract may be illegal was over & workman had no right for reinstalement. Therefore on the other hand workman failed to prove this reference in his favour, therefore, he is not entitled to any relief. The reference is thus answered in favour of the management and against the workman. Central Govt, be informed. File be consigned to record.

Chandigath.

RAJESH KUMAR, Presiding Officer

नई दिल्ली, 24 जुलाई, 200[†]

सम्भागः. 2206.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 को 34) की धरा-1 की उपधारा (3) द्वारा प्रदेश को त्रियों का प्रयोग करते हुए, केन्द्रीय सरकार एउएड्डारा । अगस्त, 2007 को उस तारीस के स्त्य में नियम करती हैं, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिकाय जो पहले से प्रवृत्त हो चुकी हैं) अध्याय-4 और 6 [धारा-76 की उपधारा (1) और धारा-77, 78. 79 और ई) के सिकाय जो पहले ही प्रवृत्त हो चुको हैं] के उपधंद उद्दीसा में निम्नलिखिड क्षेत्रों में प्रवृत्त होंगे, अधीर,

" बूदागढ़ जिले के पानपोष तहसील में कुआरमुण्डा, चड़ि हरिडापुर, बीजाबहल, केलीपोष, कालोसिडिशिया, बमुनानाकी स्रो गुजस्य गाँव शामिल हैं।"

[संड्या एस-38013/23/07-एस.एस.-1]

एस. दो, जेवियर, अवर सचिव

New Delhi, the 24th July, 2007.

S.O. 2206.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act. 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Orissa namely:—

"The Revenue Village of Kuarmunda, Chadri Hariharpur, Bijabahal, feliposh, Kalosihiria, Japannanaki in the Tahsil of Panposh, Kuarmunda in the District of Sundergarh."

[No. S-38013/23/2007-SS-1] S. D. XAVTER, Under Secty.

नई दिल्ली, 24 जुलाई, 2007

का,आ. 2207.—कर्मचारी राज्य दीमा अधिनियम, 1948 (1948 का 34) को धारा-1 की उपधारा (3) द्वारा प्रदात कांक्तवों का प्रयोग करते कुए, केन्द्रीय सरकार एतदृद्वारा 1 अगस्त, 2007 को इस तारीख के रूप में नियत करती है, जिसको उक्त आधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले में प्रमृत हो चूंकी है) अध्याय-5 और 6 [धारा 76 को अपधारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रमृत हो चूंकी है] के उपवंध परिचम बंगाल के निम्नांशिक्त क्षेत्रों में प्रमृत होंगे, अर्थात,

"बस्टानगर क्षेत्र का अवशेष गैर कार्यान्वित क्षेत्र, अर्घात् मीरपुर तृंगी को मीते, बंगाला और जगतला, महेशतला पुलिस स्टेशन फिला दक्षणि 24 परगता ।"

[संख्या एस-38013/22/07-एस.एस. 1] एम. दो. जैमियर, अवर संचित्र

New Dethi, the 24th July, 2007

S.O. 2207.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act. 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2007 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI jexcept sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force of the said Act shall come into force in the following areas in the State of West Bengal namely: —

"Remaining unimplemented area of Batanagar, i.e. Mouzas of Mirpur Nungi, Banagla and Jagtala of Mahestala P.S., District - South 24 Parganas".

[No.S-38013/22/2007-SS-1]

S. D. XAVJER, Under Secy.